

21.05.2025
Sl. No.7
tkm

W. P. A. 17483 of 2024

[Sujit Kumar Dey -Vs- The Kolkata Municipal Corporation & Ors.]

Mr. Biswaroop Bhattacharya
Mr. Varun Kothari
Ms. Sreetama Biswas
Mr. Arya Bhattacharyya
... .. for the petitioner

Mr. Siddhartha Banerjee
Mr. Rahul Karmakar
Mr. A. Barman Das
... for respondent nos. 7 & 8

Mr. Alok Kumar Ghosh
Mr. Debangana Dey Nayak
... .. for the KMC

1. The petitioner, by way of the present writ petition, challenges the order dated 24.05.2024 passed by the respondent Corporation, whereby the Corporation has permitted a deviation involving change of use (residential premises to Gym) in respect of the second floor of premises no. 169, Rajdanga Nabapally, Kolkata – 700107, upon payment of fees under Sections 401 and 416 of the Kolkata Municipal Corporation Act.
2. The petitioner contends that despite making several representations, the respondent corporation did not consider the same prior to passing the impugned order. It is submitted that the principles of natural justice were not adhered to before the issuance of the said order.

3. Learned counsel appearing for the respondent raises a preliminary objection, submitting that the impugned order is appealable before the Building Tribunal.

4. In view of the existence of an alternative efficacious remedy under law, this Court is not inclined to exercise its discretionary jurisdiction under Article 226 of the Constitution of India. The petitioner is relegated to avail the statutory remedy before the Building Tribunal, as provided under Sections 401 and 416 of the Kolkata Municipal Corporation Act.

5. Learned Counsel for the petitioner has submitted that there has been a delay in filing the statutory appeal before the appropriate forum, and accordingly, prays for condonation of the said delay. It is urged that the delay occurred due to bona fide reasons, as the petitioner was prosecuting the matter before this Court under the belief that the writ petition was the appropriate remedy. The petitioner seeks indulgence of this Court on the ground that the delay was neither deliberate nor intentional, but caused by circumstances beyond his control.

6. Per contra, Learned Counsel for the respondent opposes the prayer for condonation of delay and submits that the petitioner had an efficacious statutory remedy available by way of appeal before the Municipal Building Tribunal, which he failed to avail within the prescribed period of limitation. In support of this contention, reliance is placed on the judgment dated 19.10.2023 rendered by a Division Bench of this Court in *APOT 244 of 2022*

(*Md. Ali Mirza vs. Kolkata Municipal Corporation & Ors.*). In the said judgment, the Division Bench held:

“We also accept the submission made on behalf of KMC that the appellant, having not availed the alternative remedy of statutory appeal before the Municipal Building Tribunal and thereby having allowed such remedy to become time-barred, the writ court should not entertain his application. This is particularly so because there is no provision in the KMC Act for condonation of delay for preferring statutory appeal against the demolition order. The Court cannot also extend the statutory time period for preferring such appeal. In this connection reference may be made to the decision of the Hon’ble Supreme Court in the case of Chhattisgarh State Electricity Board v. Central Electricity Regulatory Commission & Ors. and the decision of our Court in the case of Calcutta Electric Supply Corporation Ltd. & Anr. v. Kalavanti Doshi Trust & Ors.

The appellant by his own choice has placed himself in a position where he cannot avail of the statutory remedy any further. He cannot be permitted to urge such disability as a ground for the writ court to exercise its discretion in his favour. In this connection one may refer to the decision of the Hon’ble Supreme Court in the case of A.V. Venkateswaran, Collector of Customs, Bombay.”

7. This Court is of the considered view that, in light of the binding pronouncement of the Division Bench referred to herein above, and in the absence of any specific statutory provision under the Kolkata Municipal Corporation Act for condonation of delay in filing an appeal before the Municipal Building Tribunal, it would not be appropriate to exercise writ jurisdiction under Article 226 of the Constitution of India to condone such delay.

8. Nevertheless, this Court is conscious of the fact that the petitioner had approached this Court in good faith and with a bona fide belief that the writ petition was a viable remedy. The petitioner’s conduct does not appear to be mala fide or dilatory in

nature. Therefore, while declining to condone the delay in exercise of writ jurisdiction, this Court leaves it open to the petitioner to pursue the statutory remedy before the Municipal Building Tribunal.

9. It is further observed that the petitioner shall be at liberty to raise the issue of limitation before the Municipal Building Tribunal, and the Tribunal shall consider whether the benefit of Section 14 of the Limitation Act, 1963 relating to exclusion of time spent in bona fide proceedings before a court without jurisdiction can be extended to the petitioner. The Tribunal shall decide such issue in accordance with law, uninfluenced by the observations made in the present order.

10. In view of the above, the writ petition stands disposed of with liberty to the petitioner to approach the appropriate forum as advised.

11. In consequence of the disposal of the writ petition, any connected applications pending before this Court also stand disposed of.

(Gaurang Kanth, J.)