

(2019) 03 CAL CK 0080
In the Calcutta High Court
Case No : Writ Petitions (WP) 69 Of 2019

Anshuman Sadani

APPELLANT

Vs

Kolkata Municipal Corporation & Ors

RESPONDENT

Date of Decision : 14-03-2019

Acts Referred:

Limitation Act, 1963 — Section 5
Kolkata Municipal Corporation Act, 1980 — Section 544, 546
Constitution Of India, 1950 — Article 227

Citation : (2019) 03 CAL CK 0080

Hon'ble Judges : Tapabrata Chakraborty, J

Bench : Single Bench

Advocate : Arindam Banerjee, Pradeep Kumar, Pooja Jewrajka, S. Chakraborty, Jayanta Kr, Uttam Kr, Alok Kr. Ghosh, Swapan Kr.

Final Decision : Dismissed

Judgement

The Court : Affidavit of service filed in Court today be kept on record.

The present writ petition has been preferred primarily praying for the following reliefs :-

"a) A writ of or in the nature of Mandamus do issue directing the Learned Municipal Building Tribunal to ensure the protection of subject matter of pending Appeal being B.T. Appeal no. 70 of 2017 and to act in accordance with law;

b) A Writ of or in the nature of Mandamus do issue directing the Learned Municipal Building Tribunal to hear the application under Section 5 of The Limitation Act, 1963 pending in B.T. Appeal No. 70 of 2017 and dispose of the same and to act in accordance with law;

c) A Writ of or in the nature of Prohibition do issue directing the respondent no.1 to 5 not to take any steps with regard to the demolition of premises No. 12, Indra Kumar Karnani Street, Ward No. 45, Borough - V, KMC, Kolkata - 700001, during the pendency of the pending appeal being B.T. Appeal No. 70 of 2017,

pending with the Learned Municipal Building Tribunal and to act in accordance with law;"

Shorn of unnecessary details, the facts are that an order of demolition was passed by the respondent no.5 on 20th July, 2017. Aggrieved by the said order, the petitioner preferred a statutory appeal on 28th November, 2017 before the Municipal Building Tribunal (in short, the learned Tribunal) along with a stay petition. The stay petition was dismissed by an order dated 19th December, 2017. Subsequent thereto, upon receipt of a notice under Sections 544 & 546 of the Kolkata Municipal Corporation Act, 1980 (in short, the KMC Act) a further stay petition was filed by the petitioner before the learned Tribunal. The same was also dismissed by an order dated 18th May, 2018. Aggrieved by the said order, the petitioner approached this Court by filing an application under Article 227 of the Constitution of India, being C.O. No.1396 of 2018. The said application was dismissed for non-prosecution on 6th August, 2018. Thereafter the petitioner preferred an application for recall and stay of the orders dated 19th December, 2017 and 18th May, 2018. The same was also dismissed by an order dated 5th October, 2018 and the main appeal has been fixed for hearing on 6th May, 2019.

Mr. Banerjee, learned advocate appearing for the petitioner submits that the order of demolition dated 20th July, 2017 was received by the petitioner on 11th November, 2017 and though the statutory appeal was filed within time, the learned Tribunal observed that the requirements for filing the appeal were not been complied with. The application under Section 5 of the Limitation Act, 1963 though filed in connection with the appeal has not been disposed of till date.

He argues that the order rejecting the petitioner's application for recall on 5th October, 2018 is a cryptic one and the same does not reveal any independent application of mind on the part of the learned Tribunal. The said order dated 5th October, 2018 is an unintelligible one. The said order has been brought on record by a supplementary affidavit. Let the same be kept on record.

Drawing the attention to the Court to the order dated 19th December, 2017, Mr. Banerjee submits that the petition was rejected on contest at that stage. Subsequent thereto, a notice under Sections 544 and 546 of the KMC Act was received on 14th May, 2018. In view thereof, a further stay petition was filed by the petitioner which was rejected by the subsequent order dated 18th May, 2018.

As the said notice spent its force, the revisional application preferred challenging the order dated 18th May, 2018 was not proceeded with any further and the said application was dismissed for non-prosecution on 6th August, 2018. The observations made by the learned Tribunal in the orders dated 19th December, 2017 and 5th October, 2018 are contradictory.

He further argues that the learned Tribunal ought to have appreciated that the denial of stay would have the effect of rendering the appeal infructuous.

Mr. Chakraborty learned advocate appearing for the respondent no. 6 submits that since the date of issuance of the order of demolition dated 20th July, 2017 a period of about eighteen months has elapsed. The matter has been unnecessarily delayed by the private respondent. Two interim petitions preferred by petitioner were dismissed on 19th December, 2017 and 18th May, 2018. To further delay the matter a revisional application was preferred by the petitioner and the same was subsequently dismissed for non-prosecution. After such dismissal, a further attempt was made to delay the proceedings and an application for recalling of the earlier orders was filed. The said recalling application has also been dismissed and as such there can be no embargo upon the KMC to take appropriate steps for demolition immediately.

Mr. Ghosh, learned advocate appearing for KMC submits that the matter has been illegally sought to be delayed by the petitioner by filing repeated applications before the learned Tribunal.

Indisputably the order of demolition was passed on 20th July, 2017. The first petition for interim order was rejected observing inter alia that the unauthorized construction is huge in nature which has rendered the building to be dangerous and the same may collapse at any point of time. In such circumstances, the interim order was refused. The second stay petition was also dismissed by the learned Tribunal on 18th May, 2018 observing inter alia that the petitioner has made two additional floors over an existing two storied building and the front side of the building is in a dangerous condition as the beam at the first floor level sagged at the middle portion of the beam and there is apprehension of loss of property and life. Challenging the said order, a revisional application was preferred by the petitioner and the same was dismissed for non-prosecution on 6th August, 2018. With the dismissal of the revisional application, the challenge against the order dated 18th May, 2018 did not survive and the review application was also dismissed by an order dated 5th October, 2018 giving reasons.

In the said conspectus, this Court is reluctant to exercise any discretion in favour of the petitioner and the writ petition is, accordingly, dismissed.