

16.01.2023
Item Nos. 14 & 15.
Court No.6.
S. De

M.A.T. 2043 of 2022
with
I.A. No. CAN/1/2022
I.A. No. CAN/2/2022

And

M.A.T. 2048 of 2022
with
I.A. No. CAN/1/2022
I.A. No. CAN/2/2022

Dilip Chandra Chatterjee & Ors.

Vs

Kolkata Municipal Corporation & Ors.

Mr. Suddhasatva Banerjee,
Mr. Sagnik Majumdar,
Ms. Dikshita Chomal,
Ms. Shalmoli Ghosh,
...for the appellants/writ petitioner in both
the appeals.

Mr. Biswajit Mukherjee,
Mr. Anand Farmania,
...for the Kolkata Municipal Corporation.

These two appeals and the connected applications arise out of the same set of facts and hence have been taken up for hearing and disposal together.

In re : CAN 1 of 2022 (in MAT 2048 of 2022)

MAT 2048 of 2022 is directed against a judgment and order dated September 8, 2021 whereby WPA 12116 of 2021 was disposed of. There is a delay of 438 days in filing this appeal.

Having heard learned counsel for the parties, we are satisfied with the explanation furnished for the delay. The delay is condoned.

I.A. No. CAN 1 of 2022 (in MAT 2048 of 2022) is, accordingly, disposed.

In re : CAN 1 of 2022 (in MAT 2043 of 2022)

MAT 2043 of 2022 is directed against an order dated November 10, 2022 passed in CAN 1 of 2021 in connection with WPA No.12116 of 2021, which was an application for modification of the parent order dated September 8, 2021. There is a delay of 10 days in filing this appeal.

Having heard learned counsel for the parties, we are satisfied with the explanation furnished for the delay. The delay is condoned.

I.A. CAN 1 of 2022 (in MAT 2043 of 2022) is disposed of.

The appellants herein approached the learned Single Judge by filing WPA 12116 of 2021, with the grievance that the decision of the Board of Administrators of the Kolkata Municipal Corporation dated February 3, 2021, was not being implemented. Basically, the grievance of the appellants herein was that their premises was not being separated and mutated by the Corporation. There is a partition decree from a competent Civil Court. The property in question has been partitioned by metes and bounds.

The learned Judge recorded the submission made on behalf of the Corporation that a decision has been taken to act in terms of the decision of the Board of Administrators dated February 3, 2021. The formal order was yet to be communicated to the writ petitioners. The learned Judge disposed of the writ petition with the following observations :-

“Under such circumstances, nothing remains to be decided here as the contentions of the petitioners have been addressed by the corporation. The corporation shall issue a formal order indicating to the petitioners about the implementation of the decision of the Board of Administrators with regard to the mutation of the manes of the petitioners in respect of their one-third share in the land and the water body.

The entire exercise shall be completed by the Kolkata Municipal Corporation within a period of eight weeks from date of communication of this order.”

Since the issue of separation of the premises and an allotment of a separate municipal number was not covered by the aforesaid order, the appellants filed an application for modification of the aforesaid order which was disposed of by the learned Single Judge by

an order dated November 10, 2022, which is the subject matter of the Second Appeal. The said application was disposed of with the following observations :-

“On the first day when the application was taken up, the contention of Mr. Mukherjee, the learned Advocate for the Corporation, was that the petitioners had already been intimated that the water body cannot be separately mutated in the names of the co-sharers, but the assessment book of the Kolkata Municipal Corporation would record the mutation against an assessee number. This Court had directed the Corporation to communicate the decision with regard to the petitioners’ application for mutation by its order dated September 8, 2021. Such order was passed on the basis of the decision of the Chairperson, Board of Administrators dated February 3, 2021, which is at page 16 of the application.

Under such circumstances, until the Corporation communicates its decision as per the direction of this Court, nothing remains to be decided in the modification application. The modification application is based on an

apprehension that the decision of the Board of Administrators shall not be carried out by the Corporation.

In case the Corporation passes an order, which is not satisfactory to the petitioners, and is contrary to the decision of the Board of Administrators dated February 3, 2021, the remedy of the petitioners would be to challenge the final order to be passed as per the direction of this Court in WPA No.12116 of 2021. Before any decision is taken and communicated to be petitioner after the order of this court in WPA 12116 of 2021, no further orders can be passed in this modification application.”

Being aggrieved by the aforesaid two orders, the first disposing of the writ petition and the second disposing of the modification application, these two appeals have been filed by the writ petitioners.

We have heard learned counsel for the parties. The issue appears to be a very simple one and not complicated at all. Admittedly, the appellants have demarcated, by construction of boundary wall, the landed portion that they possess and occupy.

Admittedly, an assessee number has been allotted for the said portion. The appellants now ask for a separate municipal premises number for the said portion.

Mr. Mukherjee, learned advocate appearing for the Corporation submits that it should be recorded that once such separate municipal number is assigned to the portion aforesaid, all disputes shall stand resolved.

We direct the Corporation authorities to allot a separate municipal premises number for the landed portion of the premises in question which is in the possession of and owned by the appellants as indicated in a map at page 138 of the said petition. This shall be done within a period of eight weeks from the date of communication of this order to the appropriate officer in the Corporation.

Since we have not called for affidavits, the allegations contained in the stay applications are deemed not to be admitted by the respondents.

M.A.T. 2043 of 2022 and M.A.T. 2048 of 2022 are, accordingly, disposed of along with the applications being I.A. No. CAN 2 of 2022 (in MAT 2043 of 2022) and I.A. No. CAN 2 of 2022 (in MAT 2048 of 2022).

Urgent certified photostat copy of this order, if applied for, shall be given to the parties as expeditiously as possible on compliance with all the necessary formalities.

(Apurba Sinha Ray, J.)

(Arijit Banerjee, J.)