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**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

W.P.A. 9212 of 2020

(Through Video Conference)

**Prasanta Karmakar
-versus
The Kolkata Municipal Corporation & Ors.**

**Mr. Biswanath Chatterjee,
Mr. Sumitava Chakraborty.
...For the Petitioner.**

**Mr. Ranajit Chatterjee,
Mr. Subhrangsu Panda.
...For the KMC.**

**Mr. Tapan Kumar Mukherjee.
...Respondent No. 7 in person.**

The grievance of the petitioner is that, despite a specific direction of co-ordinate Bench of this Court dated March 15, 2019 passed in W.P. No. 1700(W) of 2019, directing the competent authority of KMC to initiate a proceeding under Section 400 of the Kolkata Municipal Corporation Act, 1980 and to conclude the same in accordance with law and upon granting an opportunity of hearing to the petitioner and the private respondents, such a proceeding was drawn up and disposed of without hearing the present writ petitioner.

Learned counsel appearing for the petitioner places a subsequent order whereby another co-ordinate

Bench of this Court, while disposing of W.P. No. 16865 (W) of 2019, had observed that although a copy of the demolition order-in-question had been served upon the present petitioner, the petitioner was given the liberty to approach the Building Tribunal of the KMC against the demolition order passed by the Special Officer.

Pursuant to such liberty, an appeal was preferred before the appropriate authority, that is, the Building Tribunal, which is still pending.

Learned counsel appearing for the petitioner further submits that, despite the liberty given to the petitioner by the last preceding order referred to above, the Building Tribunal has not been functioning for about the last ten months till date and, as such, the petitioner is virtually rendered remediless in such scenario. It is thus submitted that the demolition order passed by the Special Officer of the Kolkata Municipal Corporation in D/Case No. 7-D/Br-IX/19-20, may be stayed till disposal of the appeal preferred by the petitioner before the Building Tribunal.

Learned counsel appearing for the KMC submits that since an appeal is already pending against the order of demolition of the Special Officer, the petitioner acted *de hors* the law in preferring the instant writ petition for a similar relief.

The respondent no. 7 Sri Tapan Kumar Mukherjee appears in person with the leave of Court

and submits categorically that the number of the appeal purportedly preferred by the petitioner before the Building Tribunal was wrongly given on the previous occasion before this Court. He is also equipped with an information slip, a copy of which is filed in court today, to the effect that no such appeal had been preferred under such number before the Building Tribunal. However, the respondent no. 7 is fair enough when he discloses that, subsequently an appeal was actually preferred by the petitioner against the demolition order.

Respondent no. 7 further submits that the demolition work had already started and it would enure to the benefit of none in the event the demolition order is stayed indefinitely.

Upon hearing counsel for the parties, it is evident that the Building Tribunal is not functioning at present and, as such, the conspectus of the present writ petition has to be deemed to include an examination of the veracity of the demolition order as well. It is evident from the record that the demolition order dated June 11, 2019 was passed without hearing the petitioner although subsequently a copy of the demolition order was served upon the petitioner.

At this juncture it would be premature to consider the merits of the complaint and the legality of the demolition order otherwise, since the same would

tantamount to usurping the jurisdiction of the Special Officer concerned. However, no useful purpose would be served in keeping the appeal pending before the tribunal indefinitely in view of the said tribunal not functioning at the present moment due to paucity of a presiding officer.

Hence, W.P.A. 9212 of 2020 is disposed of by setting aside the demolition order dated June 11, 2019 passed by the Special Officer in D/Case No. 7-D/Br-IX/19-20 and directing that all necessary parties, including the complainant (respondent no.7) and the present petitioner, be heard and accordingly the complaint regarding demolition of the building-in-question be decided afresh.

It is made clear that the officer of the KMC, before hearing the matter afresh, shall cause appropriate notice to be served upon all the concerned parties and shall dispose of the matter within two months from the date of communication of this order to the Special Officer concerned.

All parties are given liberty to communicate this order to the said Special Officer at the earliest.

There will be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be given to the parties, upon compliance of necessary formalities.

(Sabyasachi Bhattacharyya, J.)