

S/L 102
29.07.2021
Court. No. 19
GB

W.P.A. 11987 of 2021

Bhagwan Prasad Shaw & Anr.
VS
The Mayor, The Kolkata Municipal Corporation & Ors.
(Through Video Conference)

Mr. Sudhakar Thakur.

...for the Petitioners.

*Mr. Achinta Banerjee,
Mrs. Sabnam De.*

...for the K.M.C.

Affidavit-of-service filed in Court today, be kept with the record.

The writ petition has been filed challenging the notices issued by the Kolkata Municipal Corporation under Sections 544 and 546 of the Kolkata Municipal Corporation Act, 1986, dated July 23, 2021.

It is the contention of the petitioners that a demolition order was passed. Aggrieved, the petitioners filed an appeal before the learned Tribunal along with an application for condonation of delay. During the pendency of the application, the Kolkata Municipal Corporation issued the aforementioned notices and have already started with the demolition process.

It is submitted that the learned Tribunal was not sitting for sometime due to the pandemic situation and as such the petitioners finding no other alternative have,

approached this Court under Article 226 of the Constitution of India.

Although the petitioners have preferred an appeal as per their right under the statute, the learned Tribunal is not sitting for reasons beyond control. Thus, the writ petition is entertained. The law provides a right of appeal. The petitioners have exercised such right of appeal. The petitioners have a right to pray for a stay in the appellate forum. The Kolkata Municipal Corporation ought to keep the demolition process in abeyance till the petitioners are able to approach the learned Tribunal for appropriate orders. Otherwise, their legal right under the statute will be denied.

Mr. Banerjee, learned advocate appearing on behalf of the Kolkata Municipal Corporation submits that as the appeal was filed belatedly and no stay order was passed, the Kolkata Municipal Corporation had issued the impugned notices.

Having heard the rival contentions of the parties and taking into consideration that the learned Tribunal was not sitting due to the pandemic situation, this Court is of the opinion that the petitioners should be granted an opportunity to move the learned Tribunal by filing appropriate applications in accordance with law. It is informed that the learned Tribunal will sit from August 2, 2021. The petitioners shall immediately file/move the applications before the learned Tribunal and pray for interim orders in accordance with law upon notices to the Kolkata

Municipal Corporation as also the respondent No. 6. Service of notice upon the respondent no.6 is not complete. Although, the writ petition has been sent to the said respondent. In view of the urgency involved, as the demolition order has been executed from this day, service of notice under Rule 26 is dispensed with in respect of respondent no.6. Moreover, no order is being passed which shall affect the rights of respondent no.6 in any way.

The learned Tribunal shall dispose of the applications filed by the petitioners within a period of two weeks. The Kolkata Municipal Corporation shall not implement the demolition order for a period of four weeks from date.

This Court has not gone into the merits of the case of the parties. The learned Tribunal shall decide the issues in accordance with law and if the interim protection is granted to the petitioners by the learned Tribunal, the KMC shall act accordingly. This order shall not be treated as one on merits. The Tribunal shall decide the issues independently.

Mr. Banerjee undertakes to inform the Kolkata Municipal Corporation of this order over telephone and through whatsapp message. The petitioner is also granted liberty to send whatsapp message to the respondent nos.4 and 5, informing them of this order.

Accordingly, the writ petition is disposed of.

However, there will be no order as to costs.

Parties to comply with the order on the communication of the learned advocates and also on the basis of the server copy of this order.

(Shampa Sarkar, J.)