

22.11.2021
Sl. No.4
srm

W.P.A. No. 12518 of 2021

Smt. Uma Chowdhury

Vs.

The Kolkata Municipal Corporation & Ors.

Mr. P.S. Deb Barman,
Mr. Amit Gupta,
Mr. S. Alam,
Mr. M. Nazar Choudhury

...for the Petitioner.

Mr. Alok Kumar Ghosh,
Mr. Subhrangshu Panda,
Mr. Shamik Bagchi

...for the KMC.

The writ petition has been filed by an owner of three flats and a garage in Premises No.80/3G, Baderiapur Road, P.O. & P.S. Jadavpur, Kolata-700032 challenging a notice of demolition of the Kolkata Municipal Corporation pursuant to the order passed by the Executive Engineer(C)/Bldg/Br-X of the Kolkata Municipal Corporation, dated July 24, 2021.

During the course of argument, Mr. Ghosh, learned Advocate appearing on behalf of the Kolkata Municipal Corporation, raised a point of maintainability of the writ petition at the instance of the owner who does not claim responsibility for the construction. It was argued by Mr. Ghosh that the person responsible that is the husband of the petitioner was given sufficient notice and opportunity of

hearing. Next, he submitted that the order impugned is an appealable order.

Mr. Deb Barman, learned Advocate appearing on behalf of the petitioner, challenged the order on the point of jurisdiction and submitted that the owner has also the right of hearing in view of the right to property protected under Article 300A of the Constitution of India.

Another legitimate point was raised by the petitioner that the corporation ought to have allowed at least the statutory period of appeal to expire before issuing a notice directing such demolition. The order was issued on July 24, 2021 and the persons responsible were asked to demolish the structure within seven days.

The law prescribes that the person aggrieved by an order of demolition has the right of appeal and such appeal can be preferred within 30 days from the date of the order. The Court is in agreement with this contention of Mr. Deb Barman, that at least the time to prefer the appeal ought to have been allowed. However, the Court does not support his other contention that the alternative remedy of appeal would not be a bar in this case.

Having heard the learned Advocates for the respective parties, this writ petition is disposed of with liberty to the persons responsible, whose names are mentioned in the order

impugned, to prefer an appeal against the order of demolition before the Municipal Building Tribunal in accordance with law. Such appeal shall be filed within a period of 10 days from date on the basis of a photo copy of the order, if the certified copy has not yet been received. As and when the said certified copy is received, the same shall be filed before the learned Tribunal. The order of demolition shall remain stayed unconditionally for a period of six weeks within which time the persons responsible/appellants shall be at liberty to apply for such interim orders as permitted by law. The application for such interim order shall be filed upon notice to the corporation. The learned Tribunal shall hear out the said application in accordance with law and independently without being influenced by any observation made in this order. If the appellants fail to obtain any interim order, then the corporation may proceed in accordance with law.

This Court has not gone into the merits of the order of demolition and all points are to be decided by the authority concerned.

This writ petition is, thus, disposed of.

There will be no order as to costs.

All parties are to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)