

S/L 11
02.12.2021
Court. No. 19
srm

W.P.A. No. 18778 of 2021

Sri Debabrata Paul

Vs.

The State of West Bengal & Ors.

Mr. Anupam Kumar Bhattacharyya,
Mr. Anindya Halder,
Mr. Dilip Kumar Mandal

... for the Petitioner.

Mr. Arun Kumar Roy,
Mr. Hara Krishna Halder

... for the State-respondents.

Mr. N.C. Bihani,
Ms. Paushali Banerjee

... for the K.M.C.

Affidavit of service is taken on record.

The order impugned before this Court is an
appealable order.

The petitioner is aggrieved by a demolition order dated September 29, 2021 issued by the Executive Engineer (C), Building Department, Borough-III, Kolkata Municipal Corporation. The order of implementation of the demolition order dated October 27, 2021 has also been challenged. The petitioner has been threatened by the corporation that they

would demolish the building. According to the petitioner, even before a copy of the demolition order has been served upon the petitioner, the corporation has threatened to demolish the structure.

This Court is not inclined to decide the issues raised and the correctness of the submission of the petitioner is not required to be gone into.

Mr. Bihani, learned Advocate appearing on behalf of the Kolkata Municipal Corporation, submits that the petitioner does not have any right to maintain the application in view of the decisions of this Court, as the petitioner claims to be the grandson of the erstwhile owner of the property. According to him the petitioner did not have any right to be heard. Only the person responsible must be heard by the authorities.

I agree with Mr. Bihani on this issue as it has been settled by this Court time and again that only the person responsible for erecting the unauthorised construction has a right of audience before the competent authority in a demolition case. A tenant or an owner, who is not responsible for such construction, does not have any right of audience.

Mr. Anindya Halder, learned Advocate appearing on behalf of the petitioner, submits that the petitioner claims responsibility and is one of the persons responsible. A notice of hearing has been relied upon.

Under such circumstances, the writ petition is disposed of without any order but granting liberty to the petitioner to move the Appellate Tribunal in accordance with law. The petitioner shall also be entitled to pray for a stay of this order of demolition and the said prayer shall also be decided in accordance with law upon hearing the parties and upon adjudication of the *prima facie* case, independently.

The demolition order will remain stayed for a period of eight weeks. Thereafter, the Kolkata Municipal Corporation shall act and proceed on the basis of any order passed by the Appellate Tribunal.

If the petitioner fails to get any stay within the period as indicated above, the Kolkata Municipal Corporation shall be at liberty to proceed in accordance with law.

The point of maintainability of the appeal and the *locus* of the petitioner will be decided by the learned Appellate Tribunal.

Accordingly, the writ petition is disposed of.

However, there will be no order as to costs.

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

(Shampa Sarkar, J.)