

9.2.2022
Ct. No.19
Sl.no.17
sn

W.P.A. No. 2064 of 2022

Mohammad Abdulla

Vs.

Kolkata Municipal Corporatinion & Ors.

Mr. Sarwar Jahan
Ms. Indumouli Banerjee
....for the petitioner
Mr. Mihir Kundu
..for the KMC

Affidavit of service is taken on record.

The petitioner is aggrieved by a notice issued on February 1, 2022 by the Executive Engineer (Civil) Building Department, Borough-I of the Kolkata Municipal Corporation. The said notice has been issued pursuant to the order passed by the Special Officer (Building) in respect of the premises no. 14B, Raja Manindra Road, P.S. Chitpur, Kolkata 700 037. Admittedly, the order is an appealable one. The petitioner has preferred an appeal before the learned Municipal Building Tribunal, which has been registered as B.T. Appeal no. 27 of 2020.

It is the contention of the petitioner that the appeal could not be heard and the petitioner did not get adequate opportunity to pray for an ad-interim order of injunction restraining the Corporation from giving effect to the demolition order.

Having heard the rival contentions of the parties, this Court is of the opinion that the remedy of the petitioner lies in the appeal.

Mr. Kundu, learned advocate for the KMC submits that a G+III storied building has been constructed on the said premises, without any sanction plan and without adhering to the law. That even if the appeal is pending, such unauthorised building could not be allowed to continue.

Be that as it may, as the disputed facts are the subject matter of an appeal, this Court is of the opinion that the learned Tribunal must be directed to dispose of the appeal expeditiously. As the appeal could not be heard on the point of grant of an ad-interim order, the Corporation shall stay its hand for a period of one month. If the petitioner fails to obtain any ad-interim order from the learned Tribunal, within the aforementioned period, the Corporation shall continue with the demolition as per the notice impugned to the writ petition.

This order shall not be construed as an opinion on the legality of the construction or on the right of the petitioner to be granted any ad-interim protection. The learned Tribunal shall proceed with the matter in accordance with law and on the facts and records before it. This order is being passed only to grant an opportunity to the petitioner to approach the Tribunal as it is submitted that the Tribunal was not sitting regularly due to the pandemic.

The petitioner shall ensure that no further construction is undertaken on the same plot.

As this order is passed in presence of Mr. Kundu, the authorities are directed to act upon the learned advocate's communication. As this is a case of unauthorised construction, as alleged by the Corporation, the learned Tribunal is directed to dispose of the entire appeal expeditiously, preferably within three months from date.

This writ petition is disposed of.

There will be however no order as to costs.

All parties are directed to act server copy and the learned advocate's communication of this order.

(Shampa Sarkar, J.)