

03.03.2022
Sl. No.12
srm

W.P.A. No. 3695 of 2022

Lakshmi Narayan Das

Versus

The Kolkata Municipal Corporation & Ors.

Mr. Partha Sarathi Deb Barman,
Mr. Biswajit Chatterjee

...for the Petitioner.

Mr. Srijan Nayak,
Mr. Subhrangsu Panda

...for the Kolkata Municipal Corporation.

The petitioner has alleged that the Executive Engineer (Civil), Building Department, Borough-I, Kolkata Municipal Corporation has issued a notice under Sections 544 and 546 of the Kolkata Municipal Corporation Act, 1980 intimating the petitioner that the Corporation with its men and agents will enter into Premises No.B/2E/H/10/1, Dum Dum Road, Police Station-Sinhi, Kolkata-700002, Ward No.2, Borough-I, Kolkata Municipal Corporation and demolish the structure.

It is the contention of Mr. Deb Barman, learned Advocate appearing on behalf of the petitioner, that pursuant to a demolition case being D/Case No.027-D/B/I/21-22, an order of demolition was passed. The petitioner preferred an appeal before the learned Building Tribunal,

Kolkata being B.T. Appeal No.05 of 2022. It is submitted by the petitioner that the appeal has been fixed for hearing on March 15, 2022, but in the meantime, the Corporation has threatened to demolish the structures. Hence, this writ petition.

The learned Advocate for the Corporation submits that this Court by an order dated September 30, 2021, had granted stay of the demolition order for a period of eight weeks. The petitioner preferred the appeal long after the expiry of the stay granted by this Court. Thus, the Corporation acted on the liberty granted by this Court.

Admittedly, the petitioner had failed to file the appeal and had failed to obtain the order of stay within the period fixed by this Court. The appeal was filed more than three months after the order of this Court, within which the time the unconditional stay granted had expired.

Under such circumstances, the Court feels that the petitioner has not been diligent in pursuing his remedies under the law. However, one last chance is given to the petitioner to approach the learned Tribunal for an interim order on the next date fixed, *i.e.* on March 15, 2022. As the learned Advocate for the Corporation is before this Court, the learned Tribunal shall proceed with the matter at least on the point of grant of interim order on the next day, without

insisting for the service return on the understanding that the Corporation shall be represented through its learned Advocate before the learned Tribunal on the next date on the basis of this order. As the appeal petition has been annexed to the writ petition, the receipt of the writ petition by the Corporation shall be treated as a service of notice of the appeal. Mr. Panda is directed to inform the Corporation of this order. If the petitioner is not granted any order of injunction on the next date, upon hearing the petitioner and the Corporation on merits, the order shall be passed accordingly and the Corporation can act in accordance with law thereafter. The demolition shall remain stayed for a period of one month from date.

The Court has not gone into the merits of the claims and counterclaims of the parties and the proceeding shall be conducted before the learned Tribunal on the next date on the basis of the copy of the order which has already been filed before the learned Tribunal earlier, without the logo of the Kolkata Municipal Corporation. The learned Tribunal will proceed on the basis of the server copy of this order and pass necessary orders on the next date on the point of grant of an interim order, independently.

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.)