

S/L 7
18.05.2022
Court. No. 19
GB

WPA 8462 of 2022

Anil Sharma
VS

The Kolkata Municipal Corporation & Ors.

Mr. Gopal Chandra Das,
Mr. Mahaboob Ahmed.

...for the Petitioner.

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

...for the K.M.C.

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

The petitioner is aggrieved by a notice dated April 26, 2022, issued by the Executive Engineer (Civil/Building), Borough-IV and V, Kolkata Municipal Corporation. The order impugned is an appealable order.

It appears that 5 days time was given to the petitioner to demolish the unauthorized portion, failing which the Kolkata Municipal Corporation reserved the right to demolish the structure.

The petitioner submits that the Corporation directed self-demolition without waiting for expiry of the period, within which an appeal could have been preferred. He further submits that the certified copy of the order of demolition has not been served. Finally, it is the specific contention of the petitioner that the order of demolition is unreasoned, has been passed without any prior inspection and the nature and extent of the unauthorized construction and the alleged violation of the rules have not been mentioned in the order. According to the petitioner, the order is a non-speaking one and cannot be sustained.

The order impugned being an appealable order should be challenged by filing an appeal before the Building Tribunal. As the petitioner has not been served with the certified copy of an order, the appeal shall be filed with the communication, which has been annexed to the writ petition along with an application for stay. The memorandum of appeal and application shall be accepted by the Tribunal and the Tribunal shall proceed to hear out the application for stay.

The order of demolition shall not be given effect to for a period of four months from the date of communication of this order.

If, within the aforementioned period, the petitioner fails to obtain an interim order in respect of the construction, the Kolkata Municipal Corporation may proceed in accordance with law. All the issues raised by the petitioner before this Court on the merits shall be decided by the learned Tribunal.

Certified copy has already been applied for. As soon as the same is received by the petitioner upon compliance of all formalities, the petitioner shall submit the same before the learned Tribunal.

The learned Tribunal shall decide the entire issue expeditiously and independently.

The writ petition is, thus, disposed of.

There shall be no order as to costs.

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

(Shampa Sarkar, J.)