

Sl. No.9
23.06.2022

Court No.24
B.M.

In The High Court At Calcutta
Constitutional Writ Jurisdiction
Appellate Side

WPA 9272 of 2022

Vijay Kumar Jain
Versus
The Kolkata Municipal Corporation & Ors.

Mr. Gopal Chandra Das
Mr. Mahaboob Ahmed

... for the petitioner

Mr. Alok Kumar Ghosh
Mr. Debangshu Mondal

... for the KMC

The petitioner is aggrieved by the order of demolition passed by the Executive Engineer (Civil), Building Department, Borough-IV & V, whereby the person responsible has been directed to demolish the entire unauthorised construction of RCC slab at the roof of second floor (Portion) in the Western side along with CI shed over the roof of the 3rd floor (portion) in the Western side of the premises No.57/B, Chittaranjan Avenue, Kolkata-700 012, Ward No.44, Borough-V, within five days from the date of receipt of the order.

The petitioner applied for obtaining the certified copy of the order of 11th May, 2022 and complains that the certified copy has not yet been supplied by the department. Due to want of certified copy, the petitioner is not in a position to prefer appeal before the Municipal

Building Tribunal challenging the legality of the order of demolition.

The order of demolition which has been passed is an appealable one.

The petitioner applied before the competent authority for issuance of the certified copy of the order of demolition which was required for filing the appeal before the Municipal Building Tribunal.

The statutory time period of thirty days for preferring appeal against the order of demolition is over. The application for supplying the certified copy was made on 11th May, 2022. The same has not been supplied till date. Without the certified copy, the petitioner is not in a position to approach the Municipal Building Tribunal. The petitioner apprehends that the men and agents of the Kolkata Municipal Corporation may come for the purpose of effecting demolition of the alleged unauthorized construction.

Prayer has been made on behalf of the petitioner for cancelling/revoking the order of demolition. Interim order of injunction has been prayed restraining the respondents from proceeding and or executing with the order of demolition.

It appears from the submission made on behalf of the petitioner and the documents available on record that though the order of demolition was passed on April 30, 2022 but the certified copy of the said order has not

yet been made available to the petitioner even though application for the same was made on May 11, 2022.

An aggrieved party can always approach the Tribunal within the time frame as fixed in law challenging the order of demolition. For want of the certified copy the petitioner is not in a position to prefer the appeal.

In view of the above, the instant writ petition is disposed of by permitting the petitioner to file the appeal before the Municipal Building Tribunal with the copy of the demolition order that has been supplied to him annexed at page 18 of the writ petition and the Municipal Building Tribunal is directed to register the appeal on the basis of the said order copy.

The petitioner is directed to submit the certified copy of the order as and when the same will be made available by the department.

It will be open for the petitioner to pray for stay of operation of the impugned order of demolition and in the event, such a prayer is made the Tribunal shall consider and dispose of the same on merits, at the earliest.

The men and agents of the Kolkata Municipal Corporation are restrained from proceeding further with the impugned order of demolition till July 22, 2022 or until further order, whichever is earlier.

Since, the writ petition is being disposed of without calling for affidavits, the allegations made in the writ petition are deemed not to have been admitted by the respondents.

The Municipal Building Tribunal shall decide the prayer of the petitioner absolutely on merits without being influenced by the interim order of stay of operation of the order of demolition passed herein.

The writ petition stands disposed of.

Affidavit-of-service filed in Court today is taken on record.

Urgent photostat certified copy of this order, if applied for, be given to the parties after completion of all legal formalities.

(Amrita Sinha, J.)