

Item No. 72

14.06.2022
Ct-24

In The High Court At Calcutta
Constitutional Writ Jurisdiction
Appellate Side

WPA 10105 of 2022
Sanny Yadav
v.
State of West Bengal & Ors.

Mr. Supratik Basu
Ms. Samata Chhari
Mr. Shuvam Shaw
... for the petitioner.

Mr. Debashish Ghosh
Mr. Domingo Gomes
... for the State respondents.

Mr. Debjit Mukherjee
Ms. Dipanwita Ganguly
... for the Kolkata Municipal Corporation.

The petitioner is aggrieved by the notice issued under Sections 544 and 546 of the Kolkata Municipal Corporation Act, 1980. The notice is issued in favour of one Sk. Sikandar & Ors.

The notice mentions that the owner or occupier of the premises No. B/31/IA/H/10, Cossipore Road, Ward-06, Borough-1 under the jurisdiction of the Kolkata Municipal Corporation will be demolished, as the structure standing thereon is unauthorized/dangerous.

It further mentions that the entire IV storied R.C.C. framed structured building along with brick wall has been constructed without taking any permission

from the Kolkata Municipal Corporation. The demolition work is to start from today i.e. June 14, 2022.

The aforesaid impugned notice dated May 31, 2022 was issued in furtherance of the order of demolition under Section 400(1) of the Kolkata Municipal Corporation Act, 1980 which was issued on April 5, 2022 by the Executive Engineer(C), Building Department, Borough-1, Kolkata Municipal Corporation.

The persons responsible for making construction, by the order of demolition dated April 5, 2022, was directed to demolish the said construction within five days, failing which, Kolkata Municipal Corporation will demolish the said construction. As the persons responsible did not demolish the unauthorized construction, accordingly the subsequent notice dated May 31, 2022 has been issued.

Learned advocate for the petitioner submits that an appeal has been preferred against the order of demolition dated April 5, 2022 before the Municipal Building Tribunal, Kolkata Municipal Corporation on May 18, 2022 being Appeal No. 20 of 2022. The said appeal has been filed along with an application under Section 5 of the Limitation Act. The date fixed for consideration of the case is July 15, 2022.

The petitioner submits that if the construction is demolished prior to the appeal being taken up for

consideration, the entire proceeding before the Municipal Building Tribunal will become infructuous.

Learned advocate representing the State respondents submits that as the appeal has been preferred beyond the prescribed time period, accordingly the same cannot be treated to be a valid proceeding in the eye of law.

Learned advocate appearing on behalf of the Kolkata Municipal Corporation also submits that the appeal has been preferred beyond the prescribed period of limitation and the petitioner ought to approach the Municipal Building Tribunal for necessary order. In the event the prayer made by the petitioner is refused, then he may approach this Court.

The petitioner in support of his prayer relied upon an unreported order passed by a coordinate Bench of this Court on March 7, 2022 in the matter of WPA No. 3707 of 2022 (Kishan Jaiswal v. State of West Bengal & Ors.).

It appears from the submissions made on behalf of the parties and on perusal of the documents annexed to the writ petition that, the order of demolition was issued on April 5, 2022. The said order further mentions that the IV storied R.C.C. framed structure was constructed without any permission from the Kolkata Municipal Corporation. Five days' time was given to the persons

responsible for demolishing the unauthorized construction.

The order passed under Section 400(1) of the Kolkata Municipal Corporation Act, 1980 is an appealable one. Though, the appeal has been filed before the Tribunal but the same is yet to be registered formally in view of the pendency of the application for condoning the delay in filing the appeal. As of now, it cannot be taken that there is a valid appeal registered before the Municipal Building Tribunal.

Be that as it may, as it appears that the petitioner has already approached the Tribunal for relief and date has been fixed on July 15, 2022, accordingly the men and agents of the Kolkata Municipal Corporation are restrained from taking any further steps pursuant to the notice issued under Sections 544 and 546 of the Kolkata Municipal Corporation Act, 1980 till July 20, 2022 or until further order, whichever is earlier.

It will be open for the petitioner to make appropriate application for relief before the Municipal Building Tribunal prior to the date fixed on July 15, 2022.

The Municipal Building Tribunal shall decide the matter on merits with regard to the prayer of the petitioner for stay of the notice under Sections 544 and 546 and the order of demolition under Section 400(1) of

the Kolkata Municipal Corporation Act, 1980 as expeditiously as possible.

The writ petition stands disposed of.

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

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(Amrita Sinha, J.)