

Item No. 12

20.06.2022
Ct-24

In The High Court At Calcutta
Constitutional Writ Jurisdiction
Appellate Side

WPA 11111 of 2022
Nemai Chandra Ghosh @ Nemai Ghosh & Anr.
v.
The Kolkata Municipal Corporation & Ors.

Mr. Mahaboob Ahmed
... for the petitioners.

Mr. Arijit Dey
Mr. Jayanta Kumar Dhar
... for the Kolkata Municipal Corporation.

The petitioner is aggrieved by the order of demolition issued under Section 400(1) of the Kolkata Municipal Corporation Act, 1980 in respect of the premises No. 21, Krishnadas Pal Lane, Ward No. 25, Borough-4 under the jurisdiction of the Kolkata Municipal Corporation.

The demolition order mentions that R.C.C. columns, beam, roof at 3rd floor and staircase at ground floor were constructed deviating the building sanction plan dated February 19, 2021.

It further mentions that the construction has been made in violation of the Rules of the Kolkata Municipal Corporation Building Rules, 2009.

Five days' time was granted to the petitioner to demolish the unauthorized construction failing which Kolkata Municipal Corporation would proceed for

demolition of the unauthorized construction at the expenses of the petitioners.

The order of demolition 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 6th 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 petitioners apprehend 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 petitioners 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 petitioners and the documents available on record that though the order of demolition was passed on April 18, 2022 but the certified copy of the said order has not yet been made available to the petitioners even though application for the same was made on May 6, 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 petitioners are not in a position to prefer the appeal.

In view of the above, the instant writ petition is disposed of by permitting the petitioners to file the appeal before the Municipal Building Tribunal with the copy of the demolition order that has been supplied to them annexed at page 48 of the writ petition and the Municipal Building Tribunal is directed to register the appeal on the basis of the said order copy.

The petitioners are 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 petitioners 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 20, 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.

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(Amrita Sinha, J.)