

09.03.2022
Court No. 19
Item no.01
CP

WPA 15216 of 2021

Santanu @ Santu Maity
Vs.
The State of West Bengal & Ors.

Mr. Somnath Gangopadhyay
Mr. Rahul Singh

....for the petitioner.

Ms. Tanushree Dasgupta
Mr. Avhishek Sikdar

....for the K.M.C.

Ms. Sipra Majumder
Mrs. Jyotsna Roy Mukherjee

....for the State.

The petitioner has challenged a show cause notice dated August 24, 2021 and the order of demolition dated September 6, 2021, issued by the Executive Engineer (Civil/Building), Borough-I, Kolkata Municipal Corporation in Demolition Case No. 040-D/B/I/21-22.

Records reveal that the petitioner has already instituted an appeal before the learned Municipal Building Tribunal as the order of demolition impugned before this court is an appealable order. It also appears that the petitioner has filed an application for stay of the demolition order, which has not yet been disposed of.

The petitioner hands up a copy of a notice issued by the Executive Engineer, Building Department dated February 22, 2022, from which it appears that a notice has been issued to the petitioner fixing March 14, 2022 as the date of demolition of the unauthorized structures which were detected at the time of conclusion of the demolition proceedings.

It is submitted by the petitioner that the petitioner must be given a chance to agitate his grievances at least on the point of interim stay of the demolition order before the learned appellate authority or else the appeal and the application for stay would become infructuous.

A report has been filed by the Kolkata Municipal Corporation from which it appears that the petitioner was raising further constructions in spite of there being an order of demolition with regard to the unauthorized constructions which had been detected earlier. Thus, the authorities issued a 'stop work' notice and also issued a notice directing self-demolition of the already existing unauthorized portions. It appears that an FIR has already been lodged before the concerned police station and Shyampukur Police Station Case No. 101 dated September 18, 2021 has been initiated.

Be that as it may, this court sitting in the writ jurisdiction does not express any opinion with regard to the proceedings initiated by the concerned police authorities and the said proceedings shall be reached to its logical conclusion, in accordance with law.

As the appeal before the appellate tribunal is pending, the court is of the opinion that one last chance may be given to the petitioner to try his luck before the appellate tribunal with regard to his prayer for stay of the order of demolition, which he has challenged in the appeal. If the demolition takes place at this stage, the appeal will become infructuous.

The Kolkata Municipal Corporation is directed to send the case records immediately to the appellate tribunal. The learned advocate for the Kolkata Municipal Corporation who appears in the appellate tribunal shall keep a photocopy of the entire case records ready. The point of interim order shall be decided within two weeks from the next date fixed. The order of demolition shall remain stayed till a decision is taken by the learned tribunal on the point of grant of an interim order.

The petitioner is restrained from raising any further construction. The petitioner is also injuncted from transferring the property or encumbering the same in any manner whatsoever.

The concerned police authorities shall ensure that the order of this court is complied with, and further construction does not take place. The proceedings initiated by the police authorities, on the complaint of the Corporation shall be reached to its logical conclusion in accordance with law.

The writ petition is, thus, disposed of. There shall be no order as to costs.

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

(Shampa Sarkar, J.)