

Sl. No.3
03.08.2022

Court No.24
B.M.

In The High Court At Calcutta
Constitutional Writ Jurisdiction
Appellate Side

W.P.A 15456 of 2022

Niraj Kajaria
versus
The Municipal Building Tribunal & Ors.

Mr. Suddhasatva Banerjee
Ms. Ayushi Kundu

... for the Petitioner.

Mr. Debjit Mukherjee
Mrs. Susmita Chatterjee

... for the State

Ms. Sweta Bhatta
Mr. Yashraj Roy

... for the respondent no.8

Learned advocate representing the respondent no.8
has filed his Vakalatnama in the department being filing
No.A-13709 dated 25.07.2022.

The department is directed to tag the Vakalatnama
with the records of the present case.

The matter relates to premises No.145, N.S.C Bose
Road, Ward No.97, Borough-X, under the Kolkata
Municipal Corporation.

The petitioner, as person responsible, is facing an
order of demolition. The order of demolition passed by
the Special Officer (Building) is under challenge in the
appeal pending before the Municipal Building Tribunal,
Kolkata Municipal Corporation being B.T Appeal No.27 of
2017.

The petitioner filed an application for stay. The said application stood dismissed on 19th September, 2018.

The appeal itself stood dismissed for default by an order dated 16th April, 2021 as none appeared on behalf of the appellant on repeated calls.

It has been submitted that the learned advocate representing the appellant expired during the Covid period and the petitioner was unaware of the same.

An application for restoration was filed and the appeal stood restored on 30th June, 2022.

A further notice under Sections 544 and 546 of the Kolkata Municipal Corporation Act, 1980 was issued to the person responsible on 22nd June, 2022 mentioning that necessary assistants and workmen of the Corporation will enter the premises on 7th July, 2022 for the purpose of demolishing the unauthorised construction of the roofed area measuring 36.40 sq. m in the ground floor of the said premises.

Similar notice was issued to the petitioner on 28th July, 2022. The petitioner filed an application for stay of the notice dated 22nd June, 2022.

The Municipal Building Tribunal by an order dated 4th July, 2022 dismissed the same on the ground that earlier application for stay stood rejected on 19th September, 2018 and the Tribunal cannot sit upon its own order and cannot pass any order of stay against the order of the Special Officer.

The Special Officer (Building) in the order of demolition dated 18th April, 2017 directed the person responsible to demolish the unauthorised construction of RCC roofed area measuring 36.40 sq.m which was constructed without obtaining sanction from the appropriate authority of the Kolkata Municipal Corporation as shown in the demolition sketch plan.

The legality and validity of the order of demolition is under challenge before the Municipal Building Tribunal. If at this stage the alleged unauthorised construction is demolished prior to the appeal being decided by the Municipal Building Tribunal, then the cause for filing the appeal will no longer subsist and the appeal itself will be rendered infructuous. The Kolkata Municipal Corporation can always take steps in the matter after the validity of the order passed by the Special Officer (Building) is decided by the Building Tribunal. If the order of demolition is implemented and subsequently the appeal filed by the petitioner is allowed, then there will be no scope to revert to the status quo ante position.

In view of the above, the Municipal Building Tribunal is directed to proceed with the hearing of the appeal at the earliest and take all endeavour to dispose of the same within a period of three months from date.

Till a decision is taken by the Municipal Building Tribunal in the pending appeal, the men and agents of the Kolkata Municipal Corporation are restrained from

giving any effect and/or further effect to the order of demolition as sought to be implemented vide notices dated 22nd June, 2022 and 28th July, 2022.

Learned advocate for the petitioner is directed to draw the attention of the Municipal Building Tribunal with regard to this order, immediately.

The writ petition stands disposed of.

Urgent photostat certified copy of this order be supplied to the parties, if applied for, as early as possible.

(Amrita Sinha, J.)