

07. 20.07.2022
Ct. No.06
Tanmoy

M.A.T. 1121 of 2022

**Ram Saran Shaw
-Versus-
State of West Bengal & Ors.**

**With
IA No: C.A.N. 1 of 2022**

Mr. Partha Sarathi Deb Barman, Adv.,
Mr. Amit Gupta, Adv.

...for the appellant.

Mr. Srijan Nayak, Adv.,
Ms. Rituparna Maitra, Adv.

...for the State.

Mr. Subhrangsu Panda, Adv.,
Ms. Ina Bhattacharyya, Adv.

...for the K.M.C.

Police report filed on behalf of the State, be kept
with the records.

By consent of the parties, the appeal and the
connected application are taken up together for hearing.

The writ petitioner has come up in appeal against
an order dated July 6, 2022, whereby W.P.A. 13186 of
2022 was dismissed by the learned Single Judge.

The writ petitioner approached the learned Single
Judge challenging a notice dated May 20, 2022, issued
by the Executive Engineer (Civil), Building Department,
Borough-III, Kolkata Municipal Corporation, under

Sections 544 and 546 of the Kolkata Municipal Corporation Act, 1980.

Prior thereto, it appears that there was a writ petition being W.P.A. 15791 of 2021, wherein the present writ petitioner/appellant was the respondent no.8, impugning certain alleged unauthorized structures set up by this writ petitioner on the land in question. The learned Single Judge, by order dated January 3, 2022, disposed of the writ petition with the following directions:-

- “a) An inspection of the premises shall be held. Such inspection shall be held in the presence of the parties, with 48 hours advance notice.*
- b) The report of the inspection shall be prepared and handed over to the parties.*
- c) A hearing shall be given to the parties. The parties must also be allowed to furnish their written version and make oral submissions as also adduce evidence in support of their contentions.*
- d) A reasoned order shall be passed and communicated to the parties. On the basis of what transpires at the hearing and during inspection, the proceedings shall be reached to its logical conclusion in terms of the statute.*

The court has not gone into the correctness of the claims and counter-claims of the parties and all the disputes shall be decided in accordance with law and independently by the Corporation.

The entire exercise shall be completed within a period of four months from the date of communication of this order.”

It further appears that pursuant to such directions, the Executive Engineer, Building Department, inspected the premises and heard the concerned parties. He then passed an order dated May 18, 2022, directing demolition of the impugned structures.

In the order impugned in this appeal, the learned Judge noticed the aforesaid. She further noticed that July 6, 2022, i.e. the day when the matter was being heard before the learned Judge, was fixed as the date for demolition. The writ petitioner could not produce anything before the learned Single Judge to show that the impugned structures were authorized or put up after obtaining sanction from the Corporation. The learned Judge refused to interfere and dismissed the writ petition. Hence, this appeal.

We have heard learned Counsel for the parties. It is not in dispute that the order of the Executive Engineer dated May 18, 2022 has been carried in appeal before the Municipal Building Tribunal by the appellant herein. We are told that during pendency of the appeal before the Tribunal, a part of the impugned structure has been demolished. We are told that July 28, 2022 has been fixed as the date for demolition of the remaining portion of the structure in question.

We are of the view that the Corporation should stay its hands for the time being till the Tribunal disposes of the writ petitioner's appeal. Needless to say, in the event the Tribunal dismisses the appeal, the Corporation shall complete the demolition activities. If the appeal is allowed, the consequences will follow.

We direct the Municipal Building Tribunal to dispose of the appeal as expeditiously as possible but

positively within a period of one month from the date of a copy of this order being placed before the Tribunal.

In the event, for some unavoidable reason, the appeal cannot be disposed of by the Tribunal within the time period indicated above and the appellant herein, who is also the appellant before the Tribunal, fails to obtain an *interim* order of stay before the Tribunal, nothing will stop the Corporation from proceeding with the demolition work.

The order under appeal is modified to the aforesaid extent. Since we have not called for affidavits, the allegations in the stay petition shall be deemed not to have been admitted by the respondents.

The appeal being M.A.T. 1121 of 2022 and the connected application being IA No: C.A.N. 1 of 2022 are accordingly disposed of.

All parties including the Municipal Building Tribunal shall act on the basis of a server copy of this order downloaded from the official website of this Court.

(Rai Chattopadhyay, J.)

(Arijit Banerjee, J.)