

Sl. No.1
(Supplementary List)
05.08.2022
Court No.24
B.M.

In The High Court At Calcutta
Constitutional Writ Jurisdiction
Appellate Side

WPA 17980 of 2022

Sri Somnath Das
versus
The State of West Bengal & Ors.

Mr. Siddhartha Banerjee
Mr. Anupam Dasadhikary
Mr. Shaunak Ghosh
Mr. Rajib Mullick
Ms. Shreyashi Maity

... for the Petitioner

Mr. Alok Kumar Ghosh
Mr. Gopal Chandra Das

... for the Kolkata Municipal Corporation

Mr. Arijit Chakrabarti

... for the respondent nos.7 & 8

The matter relates to premises No.41/D/23,
Biplabi Barin Ghosh Sarani, Ward No.14, Borough-III
under the jurisdiction of the Kolkata Municipal
Corporation.

The order of demolition was passed by the
Executive Engineer (Civil/Building), Borough-III on 23rd
May, 2022.

Learned advocate for the petitioner submits that an
appeal has been preferred against the order of demolition
before the Municipal Building Tribunal being B.T Appeal
No.97 of 2022 on 2nd June, 2022.

The Kolkata Municipal Corporation has issued
notice under Sections 544 and 546 of the Kolkata

Municipal Corporation Act, 1980 fixing today as the date for demolishing the unauthorised construction.

According to the petitioner, as the appeal is pending consideration before the Municipal Building Tribunal, accordingly, the men and agents of the Kolkata Municipal Corporation ought to stay their hands till an order is passed by the Tribunal in the pending appeal.

Learned advocate representing the Kolkata Municipal Corporation submits that the order of demolition was passed on 23rd May, 2022 and notice of demolition was issued on 29th July, 2022. The petitioner did not take proper steps to pursue the appeal that has been filed before the Tribunal.

It has further been submitted that the entire building has been constructed without obtaining any sanctioned plan and such unauthorised construction ought not to be permitted to stay any longer.

It appears from submissions made on behalf of both the parties that the order of demolition is already under scrutiny before the Municipal Building Tribunal. The same was filed within the prescribed time limit.

The Municipal Building Tribunal ought to have taken up the appeal for consideration at the earliest without fixing the matter after such a long period of time. If the construction is demolished prior to the appeal being decided by the Court, then the cause of action of filing appeal will be extinguished.

Accordingly, for the purpose of taking a decision in the appeal, men and agents of the Kolkata Municipal Corporation ought to stay their hands for the time being.

In view of the above, men and agents of the Kolkata Municipal Corporation are directed not to take any further steps pursuant to the notice of demolition issued on 29th July, 2022 till 30th August, 2022 or until further order whichever is earlier.

It has been submitted by the learned advocate for the petitioner that the appeal is fixed for consideration before the Tribunal on 12th August, 2022. The Tribunal is directed to decide the appeal along with the application for stay on the date fixed. The application for stay must be positively disposed of on 12th August, 2022 without granting any adjournment to either of the parties. If by any chance the application for stay cannot be disposed of on 12th August, 2022 then the same shall be disposed of within 26th August, 2022.

The Tribunal shall take all endeavour to dispose of the appeal within 30th September, 2022.

The petitioner will be at liberty to communicate this order to the Kolkata Municipal Corporation. The Corporation is directed to act on the basis of the communication sent by the learned advocate. The order passed herein be put up in the server of this Court immediately.

As the premises in question is facing an order of demolition, the person(s) responsible are restrained from making any further construction thereon and the property in question shall not be encumbered by any party in any manner whatsoever.

The writ petition stands disposed of.

Urgent photostat certified copy of this order, if applied for, be given to the parties on completion of usual formalities.

(Amrita Sinha, J.)