

06
18.11.2022
d.p.

**In The High Court At Calcutta
Constitutional Writ Jurisdiction
Appellate Side**

W.P.A 20716 of 2022

**Rinku Mukherjee
-versus
The Kolkata Municipal Corporation & Ors.**

**Mr. Samim Ahammed,
Mr. Arka Maiti.
...For the Petitioner.**

**Mr. Dilip Chatterjee,
Mr. Mihir Kundu.
...For KMC.**

**Mr. Jayanta Samanta,
Ms. K. Samanta.
...For the Respondent No.6.**

**Mr. Tanmoy Kukherjee,
Mr. Souvik Das,
Mr. K.R. Ahmed,
Mr. Rudranil Das.
...For the Respondent
Nos. 7 and 8.**

Affidavit-of-service filed in Court today is taken on record.

The petitioner is aggrieved by the order passed by the Special Officer (Building), Kolkata Municipal Corporation signed on 5th March, 2021.

The petitioner submits that the said order was communicated to the petitioner in the month of June 2022.

The said order mentions that any person aggrieved by the order may prefer appeal before the Municipal Building Tribunal within the stipulated time in accordance with the provisions of the Kolkata Municipal Corporation Act, 1980.

The said order was passed in response to a complaint filed by the petitioner alleging illegal and unauthorized construction at the instance of the respondent Nos. 7 and 8.

The demolition proceeding was under Sections 400/400(1) and 416 of the Kolkata Municipal Corporation Act.

The Special Officer passed the order under Section 400(1) of the Act.

It has been submitted by the learned advocate appearing for the petitioner that the order has been passed without jurisdiction and the same is bad in law.

Reliance has been placed on a notification published in the Kolkata Gazette Extraordinary on 9th March, 2015 which is the draft regulation for the Kolkata Municipal Corporation (Regularisation of building) Regulation, 2015.

Learned advocate appearing for the private respondents raised an issue with regard to the maintainability of the writ petition before this Court.

It appears that the order passed by the Special Officer (Building) is an appealable one.

The said order has been passed by the Special Officer under Section 400(1) of the Act and the said order is appealable under Section 400(3) of the Act.

The Court is of the opinion that the petitioner ought to have approached the appellate forum instead of filing the present writ petition.

In view of the above, the Court is not inclined to exercise jurisdiction in the matter.

The writ petition fails and is hereby dismissed.

Dismissal of the writ petition will however, not stand in the way of the petitioner from approaching the appellate forum in accordance with law, if so advised.

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

(Amrita Sinha, J.)