

7.
22-11-2022
debajyoti
(Ct. no.24)

WPA 25512 of 2022

Joydip Gupta & Ors.

Vs.

The Kolkata Municipal Corporation & Ors.

Mr. Tanmoy Mukherjee,
Mr. Mukesh Kumar Pandey,
Mr. Debabrata Ray

... For the Petitioners.

Mr. Swapan Kumar Debnath,
Mr. Gopal Chandra Das,
Mr. Debangshu Mondal

... For the K.M.C.

Mr. Jayanta Samanta,
Ms. Paromita Malakar (Dutta),
Ms. Swarnali Halder

... For Respondent No.7.

Affidavit-of-Service filed in Court today be taken on record.

The Premises No.85, Kalipada Mukherjee Road, Kolkata-700008, Ward No.122, is facing an order of demolition passed by the Special Officer (Building) on 18th July, 2022.

The petitioner being aggrieved by the order passed by the Special Officer (Building), preferred appeal before the Municipal Building Tribunal being B.T. Appeal No.151 of 2022 on 20th August, 2022 along with an application praying for condoning the delay in filing the appeal and an application for stay of operation of the order of the Special Officer (Building).

The appeal was fixed for consideration on 19th October, 2022. On 19th October, 2022, the record was put up for consideration and the Court passed order calling for the records and the matter was fixed for hearing on 20th October, 2022.

It appears from the order-sheet dated 20th October, 2022 that the petitioner, being the appellant before the Tribunal, remained absent on 20th October, 2022 and the Tribunal fixed the matter on 21st October, 2022 for hearing the stay petition.

On 21st October, 2022, the appellant was heard. The Tribunal being made aware of the fact that a writ petition was filed before the High Court challenging the order passed by the Special Officer (Building) and praying for stay of the notice of demolition, adjourned the appeal awaiting order from the High Court. Date was fixed on 1st November, 2022 for receiving the order of the High Court.

The writ petition which was allegedly pending and which prompted the Tribunal to adjourn hearing of the appeal is WPA 23357 of 2022. The specific prayer made by the petitioner in the aforesaid writ petition was for a direction upon the Kolkata Municipal Corporation not to carry out the demolition work and set aside the notice of demolition dated 11th October, 2022.

The said writ petition is still pending. A further notice has been issued by the Assistant Engineer (Civil), Building Department, Borough Nos.XIII and XIV intimating the petitioners that the men and agents of the Kolkata Municipal Corporation will enter the premises for demolishing the unauthorized structure in compliance of the order passed by the Special Officer (Building) on 18th July, 2022. The demolition is scheduled tomorrow, that is, 23rd November, 2022.

It appears from the documents annexed to the writ petition that the statutory appeal preferred

against the order passed by the Special Officer (Building) is pending consideration till date. The Tribunal is required to scrutinize as to whether the said order has been passed in accordance with law or not. If the structure is demolished and the order of the Special Officer is executed, then the appeal will be rendered infructuous.

To allow the appellate forum to decide the appeal on merits, this Court thinks it fit to direct the Assistant Engineer (Civil) to stay his hands to proceed with the impugned notice issued under Sections 544 and 546 of the Calcutta Municipal Corporation Act, 1980 till 30th December, 2022 or until further order, whichever is earlier.

It has been submitted in Court that the appeal is scheduled to be heard by the learned Tribunal on 21st December, 2022. The Tribunal shall take a decision with regard to the application for stay filed by the petitioner and pass necessary order.

In the event the petitioner fails to obtain any order of stay, variation or modification of the order of the Special Officer (Building) by the said date, the Assistant Engineer (Civil) will be at liberty to proceed with the demolition of the unauthorized construction in accordance with law.

WPA 25512 of 2022 stands disposed of.

Urgent photostat certified copies of this order, if applied for, be supplied to the parties on compliance of necessary formalities.

(Amrita Sinha, J.)