

Item No.6

28.11.2022
Ct-24

In The High Court At Calcutta
Constitutional Writ Jurisdiction
Appellate Side

WPA 26112 of 2022

Suman Saha

-vs.-

The Kolkata Municipal Corporation & Ors.

Mr. Gopal Chandra Das
Mr. Mahaboob Ahmed
... for the petitioner.

Mr. Alok Kumar Ghosh
Mr. Debangshu Mondal
... for KMC.

The petitioner is aggrieved by the notice issued under Sections 544 and 546 of the Kolkata Municipal Corporation Act, 1980 intimating that the men and agents of the Kolkata Municipal Corporation will enter the Premises No. 177, Vidya Sagar Sarani, Ward No. 123, Borough-XVI of the Kolkata Municipal Corporation with assistants and workmen on November 29, 2022 for demolishing the unauthorized structure as directed by the Special Officer in the order dated February 25, 2020 under Section 400(1) of the Act.

Challenging the order of demolition, the petitioner has already preferred an appeal before the Municipal Building Tribunal which is pending consideration till date.

The said appeal was filed in terms of the order passed by this Court on September 2, 2022 in WPA 20175 of 2022 wherein the Court granted liberty to the petitioner to approach the appellate forum without waiting for the certified copy of the impugned order of

demolition. The Court directed the Tribunal to consider the appeal and pass order on the application for stay on merits without insisting upon the certified copy of the impugned order of demolition.

Learned advocate for the petitioner submits that the Municipal Building Tribunal took up the matter for consideration on November 7, 2022 and passed order directing filing the certified copy on December 2, 2022.

The petitioner submits that the stay application is yet to be decided by the learned Tribunal and in the meantime the impugned notice under Sections 544, 546 has been issued.

It appears from the submissions made on behalf of both the parties that the BT Appeal No. 182 of 2022 along with the application for stay is pending consideration.

The Corporation ought to have waited for the outcome of the stay application but instead rushed to issue the impugned notice under Sections 544 and 546 of the Act. If the alleged unauthorized construction is demolished prior to the consideration of the application for stay, then the appeal itself will be rendered infructuous.

The learned Tribunal ought to have passed necessary order upon the Corporation for either supplying the certified copy or to have proceeded to decide the stay application without insisting on the certified copy of the impugned order. On one hand the appeal is pending and on the other, the Corporation issued notice for demolition of the unauthorized construction.

The petitioner will be prejudiced if the construction is demolished prior to the stay application being decided by the Tribunal.

In view of the above, the Assistant Engineer, Building Department, Borough –XVI, Kolkata Municipal Corporation is directed not to proceed any further with the impugned notice dated November 22, 2022 till a decision is taken by the Tribunal in the pending stay application filed by the petitioner.

The Corporation is directed to act in accordance with the direction passed by the Tribunal in the pending appeal.

The writ petition stands disposed of.

Urgent certified photocopy of this order, if applied for, be supplied to the parties expeditiously on compliance of usual legal formalities.

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(Amrita Sinha, J.)