

Item No. 1

In The High Court At Calcutta
Constitutional Writ Jurisdiction
Appellate Side

9.12.2022
Ct-24

WPA 27327 of 2022
Amrita Kumar Mondal @ Amrit Kumar Mondal
v.
The Kolkata Municipal Corporation & Ors.

Mr. Partha Sarathi Deb Barman
Md. Shakir
... for the petitioner.

Mr. Subhrangsu Panda
... for KMC.

The petitioner is aggrieved by the notice under Sections 544 and 546 of the Kolkata Municipal Corporation Act, 1980 issued on December 8, 2022 for implementing the order of demolition of the unauthorized structure being the entire RCC frame structured building constructed without taking any permission from the Kolkata Municipal Corporation at premises no. B/IB/H/15, Umakanta Sen Lane, Ward No. 4, Borough-1 of the Kolkata Municipal Corporation.

The Executive Engineer of the Kolkata Municipal Corporation passed the order of demolition on August 10, 2022. The petitioner preferred an appeal before the Municipal Building Tribunal being BT Appeal No. 189 of 2022.

By order dated December 7, 2022 the said appeal stood dismissed.

The impugned notice was issued on December 8, 2022 fixing December 9, 2022 for demolishing the unauthorized structure.

The petitioner submits that some breathing time ought to have been given to the petitioner to challenge the order passed by the Municipal Building Tribunal.

The learned advocate representing the Kolkata Municipal Corporation has placed the order dated December 7, 2022 passed by the Municipal Building Tribunal.

The learned Tribunal recorded in the order dated December 7, 2022 that the petitioner filed the appeal beyond the prescribed period of limitation without an application under Section 5 of the Limitation Act. The Tribunal was of the opinion that the application under Section 5 of the Limitation Act has been filed in a surreptitious manner and accordingly, dismissed the same to establish the sanctity of the Court and the justice delivery system.

In view of the dismissal of the application under Section 5 of the Limitation Act, the appeal stood dismissed.

The submission of the petitioner that a breathing time ought to have been given to challenge the order passed by the Tribunal cannot be accepted by the Court. It was not open for the petitioner to raise construction without obtaining a prior sanction. The petitioner took the risk of making construction and presently intends to defend the said unauthorized construction.

The men and agents of the Corporation have promptly acted upon the order passed by the learned Tribunal. Trying to stop the ball which has already been set in motion will demoralise the officers who act with promptitude. It will neither be proper nor legal to hold on

to a structure constructed unauthorizedly without obtaining sanction from the Corporation.

The Court ought not to interfere with the same to maintain the rule of law.

In view of the above, no relief can be granted to the petitioner in the instant writ petition.

The writ petition fails and is hereby dismissed.

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.)