

OD-4

ORDER SHEET
WPO/2/2022
IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
ORIGINAL SIDE

BIMAL PRAKASH SARDA
VS
KOLKATA MUNICIPAL CORPORATION AND ORS

BEFORE:
The Hon'ble JUSTICE SHAMPA SARKAR
Date : 5TH January, 2022

APPEARANCE:
Mr. Raghunath Chakraborty, Adv.
Mr. Kushal Chatterjee, Adv.
Mr. Saptarshi Kumar Mal, Adv.
...for the petitioner

Mr. A. Nath Banerjee, Adv.
Mr. Subhrangshu Panda, Adv.
Mr. Alok Kumar Ghosh, Adv.
...for the respondents

The Court : The order impugned is an appealable order. An order of demolition has been passed by the Joint Municipal Commissioner. The order of demolition under Section 400 (1) of the Kolkata Municipal Corporation Act, 1980 was sought to be implemented by the notice impugned before this Court dated 30th December, 2021 issued by the Executive Engineer (Civil/ Building) Department, Borough III of the Kolkata Municipal Corporation. From the tenor of notice it appears that the construction was made without any sanction plan and permission from the Kolkata Municipal Corporation was not obtained. This Court

is not in a position to entertain the writ petition on the ground of a statutory alternative remedy of an appeal.

The writ Court cannot sit in appeal over the decision of the authorities in the demolition case and reappreciate the evidence. Liberty is granted to the petitioner to prefer an appeal before the Municipal Corporation in accordance with law.

However, the Corporation has sought to implement the order even before the persons responsible and aggrieved got a chance to exhaust such remedy.

The writ petition is disposed of with liberty to the person responsible and /or the petitioner to prefer an appeal in accordance with law. The maintainability of the appeal including point of locus shall be decided by the Appellate Tribunal. The parties will be at liberty to pray for an interim order of stay of demolition, which shall be decided in accordance with law. The order of demolition shall remain stayed for a period of twelve weeks. If any protective order is not passed by the Appellate Tribunal within twelve weeks from date, the Corporation shall proceed in accordance with law.

This Court has not gone into the merits of the claims and counter claims of the parties.

(SHAMPA SARKAR, J.)