

OD-4

ORDER SHEET

WPO/1195/2022

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
ORIGINAL SIDE

SURAJIT DEBNATH @ TARUN DEBNATH
Versus
THE KOLKATA MUNICIPAL CORPORATION AND ORS.

BEFORE:

The Hon'ble JUSTICE SHAMPA SARKAR

Date : 7th March, 2022.

[Via Video Conference]

Appearance:
Mr. P.S. Deb Barman, Adv.
Mr. Amit Gupta, Adv.
For the petitioner.

Mr. Tapan Coomaar Dey, Adv.
Mr. Raju Bhattacharyya, Adv.
For the respondent nos. 1 to 4/the K.M.C.

The Court :- The petitioner is aggrieved by the order of demolition as also the notice issued under Sections 544 & 546 of the Kolkata Municipal Corporation Act, 1980. The allegations are that the order of demolition was issued in the absence of the petitioner and the said order was not served upon the petitioner. As a result of which, the petitioner could not approach the Appellate Tribunal.

Mr. Dey, learned Advocate appearing on behalf of the Kolkata Municipal Corporation/the respondent nos. 1 to 4, submits that the petitioner was asked to stop work, upon detection of certain

irregularities. Along with the stop work notice, a notice of hearing was given. The petitioner chose not to appear at the hearing and on the ex parte order of demolition was passed.

Having heard the rival contentions of the parties, this Court is of the opinion that as the matter relates to demolition of a property, the person responsible should have been given an opportunity to at least place his case before the authority, before such order of demolition was passed. If the petitioner failed to appear on consecutive days, the Corporation may have proceeded in accordance with law. However, in this case, it is apparent and on record that the petitioner was not heard. On the first day the matter should have been adjourned. The reasons for the absence of the petitioner is not gone at this stage, but the Court is of the opinion that for the ends of justice and for denial of the right of being heard, the order of demolition must be set aside and the entire matter be heard afresh and in accordance with law.

Accordingly, the notice dated February 22, 2022 and the order of demolition passed in respect of premises No. B/13A/H/27, Paikpara Raja Manindra Road, Ward-004, Borough-I be set aside and cancelled. As the notice impugned already indicates the nature of unauthorized construction, the Court does not think it necessary to direct further inspection. The petitioner will be at liberty to deal with the allegations by filing his written statement and also adduce oral and documentary evidence, before the authority concerned.

In order to avoid further complication and disputes with regard to the service of notice, this Court fixes the date of hearing here and now. The demolition case against the petitioner will be heard on March 31, 2022 at 12 noon. A reasoned order shall be passed upon completion of the hearing. The order must be communicated to the petitioner. The Corporation shall be at liberty to take appropriate steps, in accordance with law, thereafter. Unnecessary adjournments shall not be granted.

The entire exercise shall be completed within a period of one month from the date fixed by this Court.

The instruction of the Corporation is kept on record.

The writ petition is, thus, disposed of.

(SHAMPA SARKAR, J)