

OD-4

ORDER SHEET

WPO/1269/2022

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
ORIGINAL SIDE

RAJU GHOSHAL
Versus
THE STATE OF WEST BENGAL AND ORS.

BEFORE:
The Hon'ble JUSTICE SHAMPA SARKAR
Date : 8th March, 2022.

[Via Video Conference]

Appearance:
Mr. Parthasarathi Deb Burman, Adv.
Mr. Amit Gupta, Adv.
Mr. Somnath Gangopadhyay, Adv.
Mr. Rahul Singh, Adv.
For the petitioner.

Mr. Alok Kumar Ghosh, Adv.
Mr. Subhrangsu Panda, Adv.
For the K.M.C.

Mr. Debjit Mukherjee, Adv.
Ms. Susmita Chatterjee, Adv.
For the State.

The Court :- The petitioner is aggrieved by the notice under Section 544 and 546 of the Kolkata Municipal Corporation Act, 1980 issued by the Executive Engineer [C], Building Department, Borough-I. By the said notice the Executive Engineer fixed the date for demolition of the property situated at premises no. B/16/H/10, Haralal Mitra Street, Ward-007, Borough-I on March 4, 2022.

It appears that liberty was granted to the petitioner by this Court to prefer an appeal against the demolition order. An appeal has been filed by the petitioner before the learned Tribunal, which has been registered as BT Appeal No. 19 of 2022. It is further submitted that application under Section 5 of the Limitation Act, for condonation of delay in filing the appeal has not been filed. An application for stay has been filed. It is also submitted that the next date fixed for hearing of the appeal by the learned Tribunal, is March 11, 2022.

This Court does not find any illegality with the action of the Corporation. The Corporation issued the notice after the expiry of the period of stay of the demolition order, granted by this Court. The petitioner had not been able to obtain an order of stay of demolition from the Tribunal within such time as permitted by the court.

However, for the ends of justice, this Court is of the opinion that the petitioner may be granted one last chance to try his luck before the learned Tribunal.

As the appeal is belated, liberty is granted to the petitioner to file an application for condonation of delay within March 9, 2022. The Tribunal shall act on the application, on the basis of the learned Advocate's communication of the order passed by this Court. The application for condonation of delay will be disposed of within a week from the next date fixed. A copy of the application shall be served in advance to the learned Law Officer of the Corporation who appears before the Tribunal. The application for condonation of delay will be heard on

the next date fixed. As the Corporation is appearing before the Court, this order will be deemed to be notice of the appeal and application to the Corporation and the learned Tribunal shall proceed without insisting for the service return on the next date. If the delay is condoned and the appeal is regularized and registered, the application for stay will be decided within one month thereafter. Unnecessary adjournments shall not be granted.

The demolition shall be stayed for a period of two months and thereafter shall be subject to this decision of the learned Tribunal that will be passed in the stay application.

In view of the failure of the petitioner to comply with the order of this Court and taking note of the delay committed by the petitioner of almost four months in filing the appeal from the date of the order of this Court, cost of Rs.10,000/- (ten thousand) is imposed.

The cost shall be deposited in the Corporation's main office by the petitioner, on the basis of the order of this Court.

This Court has not gone into the merits of the case and the learned Tribunal will decide all the issues.

All parties are to act on the basis of the server copy of this order.

(SHAMPA SARKAR, J)