

OD-7

ORDER SHEET
IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
ORIGINAL SIDE

WPO/1939/2022

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

BEFORE:

The Hon'ble JUSTICE SHAMPA SARKAR

Date : 12th April, 2022.

Appearance :

Mr. P. S. Deb Barman, Adv.

Mr. Amit Gupta Adv.

Mr. M. N. Choudhury, Adv.

Mr. Swapan Kr. Debnath, Adv.

Mr. S. Sikdar, Adv.

Mr. Partha Sarathi Deb Barman, Adv.

Mr. Amit Gupta, Adv.

The Court: The order impugned is an appellable order. The petitioner has raised a dispute that the learned Advocate who went to represent the petitioner before the Executive Engineer(Civil), Building, Borough-I was not heard. The written notes of argument were not looked into and the order was passed without recording any of the submissions made by the said learned Advocate. Mr. Deb Barman further submits that the prayer for retention of the unauthorized portion was not considered by the authority.

The order records that a two-storeyed RCC frame structure along with brick wall and extended RCC columns over the roof of the 1st floor has been constructed, without any permission from the Corporation. Upon such finding, a direction for demolition has been passed. A hearing

was given. The order records the extent of the unauthorized construction.

With regard to the factual disputes, the petitioner is entitled to agitate such points before the appellate authority. The question of retention is also a matter to be decided by the appellate authority in accordance with law. It is submitted by the Corporation that the extent of unauthorized construction as recorded in the order of demolition can never be regularized as the said deviations are major.

However these issues touch the merit of the demolition order, which should be decided by the appellate forum. The petitioner is at liberty to file an appeal in accordance with law. The memorandum of appeal shall be filed within April 20, 2022 along with a copy of the order as supplied to the petitioner, if the petitioner has not yet received the certified copy. The petitioner shall apply for the certified copy of the order. Upon receipt thereof, the certified copy will be filed before the appellate authority.

The petitioner is entitled to seek stay of the order, before the appellate authority. The Corporation shall not give effect to the said order of demolition for a period of three months from date. If within the aforementioned period, the order of demolition is not stayed by the learned Tribunal, the Corporation will proceed in accordance with law.

The observations made in this order are restricted to the disposal of the writ petition. The learned Tribunal shall decide the issues independently.

The writ petition is disposed of accordingly.

(SHAMPA SARKAR, J.)

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