

WPO No.2241 of 2022
IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
ORIGINAL SIDE

SATYENDRA KUMAR SHAW
ALIAS MOTI KUMAR SHAW
Vs.
THE KOLKATA MUNICIPAL CORPORATION & ORS.

BEFORE:
The Hon'ble JUSTICE AMRITA SINHA
Date: 10th June, 2022.

Appearance:
Mr. Partha Sarathi Deb Burman, Adv.
Mr. Amit Gupta, Adv.
Md. N. Chowdhury, Adv.
...for the Petitioner.

Mr. Ambar Nath Banerjee, Adv.
Mr. Swapan Kumar Debnath, Adv.
...for KMC.

The Court:- The order dated 26th May, 2022 passed by the Executive Engineer (Civil/Building), Borough-3 of the Kolkata Municipal Corporation and the subsequent notice issued under Sections 544 and 546 of the Kolkata Municipal Corporation Act, 1980 dated 6th June 2022 by the same authority is under challenge in the present writ petition.

The primary contention of the petitioner is that the Executive Engineer (Civil/Building) is not the competent authority to issue the order dated 26th May, 2022.

It has been submitted that the said order was passed without following the provisions as mentioned in the Kolkata Municipal Corporation Act, 1980.

By the impugned order dated 26th May, 2022 the petitioner has been directed to demolish the illegal construction in the premises No.1/H/ 72 B.B. Ghosh Sarani, Ward No.14, Borough-3 within five days from the date of

receipt of the order, failing which the Kolkata Municipal Corporation would demolish the said construction.

The petitioner submits that the order impugned is an appealable one and the time to prefer the appeal is 30 days. The Executive Engineer has only granted five days time for demolishing the alleged illegal construction.

The petitioner submits that according to the provisions of law the petitioner is entitled to prefer appeal before the Appellate authority but because of the limited time granted in the impugned order, the petitioner apprehends that coercive steps may be taken in the matter. The apprehension of the petitioner is fortified from the subsequent notice dated 6th June, 2022 whereby notice has been given that the demolition of the alleged illegal construction will start from Monday, i.e. 13th June, 2022.

Learned Advocate for the Kolkata Municipal Corporation submits that the structure is a three storied building which has been constructed without obtaining any plan from the Kolkata Municipal Corporation.

As it appears that a preliminary objection has been raised with regard to the competency of the authority issuing the impugned order directing demolition and law permits the aggrieved party to prefer appeal within thirty days and the said period of thirty days is yet to be over, accordingly, the instant writ petition is disposed of by granting liberty to the petitioner to approach the Appellate Authority challenging the order dated 26th May, 2022.

In the event appeal is preferred before the Appellate Authority within seven days from date, the Appellate Authority shall accept the appeal and register the same without insisting upon filing of the certified copy thereof which the petitioner will produce as and when the same is made available.

The petitioner shall apply for the certified copy of the order immediately within the aforesaid period of seven days.

All points are left open for the petitioner to be agitated before the Appellate Authority and the said authority is to decide the appeal on merits on the basis of the submissions to be made by the petitioner before the said authority.

The Executive Engineer of the Kolkata Municipal Corporation is restrained from proceeding any further with the impugned order dated 26th May, 2022 and the subsequent notice dated 6th June, 2022 till 30th June, 2022 or until further order passed by the Appellate Authority, whichever is earlier.

Supplementary affidavit and affidavit of service filed in Court today are taken on record.

The writ petition stands disposed of.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties upon compliance of usual legal formalities.

(AMRITA SINHA, J.)