

WPO No.2270 of 2022
IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
ORIGINAL SIDE

SANJOY DAS & ORS.
Vs.
THE KOLKATA MUNICIPAL CORPORATION & ORS.

BEFORE:
The Hon'ble JUSTICE AMRITA SINHA
Date: 15th June, 2022.

Appearance:
Mr. S. Bhattacharya, Adv.
Mr. Lalratan Mondal, Adv.
Mr. Pranab Kumar Saha, Adv.
Mr. Himadri Chakraborty, Adv.
...for Petitioners.

Mr. Subhrangsu Panda, Adv.
Mr. Dwijadas Chakraborty, Adv.
...for KMC.

The Court:- The petitioners are aggrieved by the order dated 23rd May, 2022 passed by the Executive Engineer (Civil/Building), Borough-III, Kolkata Municipal Corporation directing the person responsible to demolish the illegal construction of about 330 sq.m. in the premises No. 40D/H/7/3, U. C. Banerjee Road (Portion opposite to P & T Office & good luck tailors) Ward No. 30, Borough-III within five days from the date of receipt of the order failing which the Kolkata Municipal Corporation will demolish the said construction and lodge FIR against the person responsible before the concerned Police Station.

The copy of the said impugned order was served upon the petitioners on 7th June, 2022 and the same is evident from the stamp affixed to the said notice under the signature of the Administrative Officer, Building Department, Borough-III, Kolkata Municipal Corporation.

The order impugned is an appealable one. The petitioners intend to file an appeal against the said order.

Grievance of the petitioners is that since only five days' time have been granted for demolishing the alleged unauthorized portion, they will not be in a position to file an appeal before the Municipal Building Tribunal. According to the provision of law a person aggrieved by the order of demolition is entitled to prefer an appeal within a period of thirty days from the date of the order.

The petitioner apprehends that if the demolition work is carried out prior to the appeal being filed and considered by the Municipal Building Tribunal, then the petitioner will be left with no remedy and the appeal to be filed will be rendered infructuous.

Accordingly, the instant writ petition is disposed of by granting leave to the petitioners to prefer appeal before the Municipal Building Tribunal strictly in accordance with law. In the event appeal is preferred before the Municipal Building Tribunal, the same shall be decided on merits by the Municipal Building Tribunal at the earliest. The petitioners will be at liberty to pray for interim order seeking stay of portion of the order impugned.

The order impugned herein is stayed till 8th July, 2022 or until further order whichever is earlier.

It is made clear that the Court has not gone into the merits of the order impugned herein and all points are left open to be decided by the Municipal Building Tribunal at the time of consideration of the appeal to be filed by the petitioners.

Affidavit of service filed in Court today be kept with the record.

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

(AMRITA SINHA, J.)

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