

OD-6

ORDER SHEET

WPO/2874/2022

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
ORIGINAL SIDE

SRI SAYLA KUMAR SADHUKHAN
-VS-
THE KOLKATA MUNICIPAL CORPORATION AND ORS

BEFORE:

The Hon'ble JUSTICE AMRITA SINHA

Date : November 9, 2022.

Appearance:

Mr. Pran Gopal Das, Adv.
Mr. Sounak Bhattacharjee, Adv.
Mr. Sounak Mandal, Adv.
...for the petitioner

Mr. Fazlul Haque, Adv.
Mr. Mihir Kundu, Adv.
...for KMC

The Court: The petitioner is aggrieved by the order dated 1st November, 2022 passed by the Executive Engineer (Civil), Building Department, Borough-I, Kolkata Municipal Corporation directing the petitioner to demolish the unauthorized construction of approximately 391 sq. meter at premises no. B/112/1/H/5, Cossipore Road, Ward No.6, Borough-I, Kolkata- 700002 within five days from the date of receipt of the order, failing which the Corporation will demolish the said construction and lodge FIR and recover the cost of demolition from the petitioner.

Learned advocate for the petitioner submits that the order impugned is an appealable one. The petitioner intends to prefer an appeal before the appellate forum and seeks some time to approach the said forum.

Learned advocate representing the Kolkata Municipal Corporation submits that the order of demolition was passed in compliance of the direction passed by this Court on 18th July, 2022 in WPA/8183/2021 (Sandhya Paul & Another -vs- Kolkata Municipal Corporation & Others).

It appears from the submission made on behalf of the parties that the order in question is an appealable one. According to the provision of the KMC Act, 1980, the aggrieved party may prefer appeal within a period of 30 days from the date of the order. The order impugned herein is dated 1st November, 2022 with only five days' time granted for implementing the same. The appellate provision will be rendered otiose if the aggrieved party is not permitted to avail the statutory remedy.

Accordingly, the petitioner is granted liberty to approach the appellate forum within 30th November, 2022.

The Kolkata Municipal Corporation is restrained from taking any action further to the impugned order of demolition dated 1st November, 2022 till 2nd December, 2022 or until further order(s), whichever is earlier.

The appellate forum is directed to accept the appeal without pressing for the certified copy of the impugned order.

In the event the petitioner fails to obtain any order either staying/ modifying the order impugned within 2nd December, 2022, it will be open for the Kolkata Municipal Corporation to take steps for implementation of the order of demolition.

WPO/2874/2022 is disposed of.

The affidavit-of-service is taken on record.

Instructions given by the Kolkata Municipal Corporation is also kept with the record.

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

(AMRITA SINHA, J.)

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