

OD-4

ORDER SHEET
WPO No. 2971 of 2022
IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
ORIGINAL SIDE

MD. ALI MIRZA
VS.
KOLKATA MUNICIPAL CORPORATION & ORS.

BEFORE:
The Hon'ble JUSTICE AMRITA SINHA
Date: 8th December, 2022.

Appearance:
Mr. Arindam Banerjee, Adv.
Mr. Arif Ali, Adv.
Mr. Yusuf Ali Mirza, Adv.
Mr. Sarban Bhattacharjee, Adv.
...for Petitioner.

Mr. Gopal Chandra Das, Adv.
Mr. Debangshu Mondal, Adv.
... for KMC.

Mr. Shamit Sanyal, Adv.
Mrs. Priyakshi Banerjee, Adv.
...for Respondent No.7.

The Court:- The order of demolition passed by the Special Officer (Building), Kolkata Municipal Corporation on 19th June, 2017 is yet to be implemented. The said order is annexed at pages 37 to 40 of the writ petition. The date of the order as appearing at page 37 mentions 19th May, 2017 and the signature of the Special Officer (Building), Kolkata Municipal Corporation is made on 19th June, 2017.

On 7th August, 2017 a corrigendum was made by the Special Officer (Building), Kolkata Municipal Corporation clearly mentioning that the date of the order should be read as '19th June, 2017'.

Notice under Sections 544 and 546 of the Kolkata Municipal Corporation Act, 1980 impugned in the present writ petition inadvertently

mentioned the date of the order passed by the Special Officer (Building), Kolkata Municipal Corporation as 19th May, 2017.

The Court has perused the records of the case and concludes that the order was passed by the Special Officer (Building), Kolkata Municipal Corporation on 19th June, 2017.

Submission of the petitioner that no opportunity of hearing was given to the person responsible in the demolition proceeding has also been considered by the Court. From the records, it appears that the notice of hearing scheduled on 15th June, 2017 was sought to be served upon the person responsible through speed post.

Despite repeated attempts, person responsible failed to receive the envelope. The unserved envelope is available in the records of the Kolkata Municipal Corporation.

It appears from the postal receipt affixed to the said envelope addressed to the writ petitioner that the same was put to post on 5th June, 2017. There are endorsements that on 7th June, 2017 and 8th June, 2017 the envelope was sought to be served and intimation sent to the petitioner but the envelope was not claimed.

Petitioner submits that the same cannot be taken as good service. Learned advocate appearing for the petitioner submits that the notice was not served in accordance with law. Provision of Section 557 of the Kolkata Municipal Corporation Act, 1980 has been placed in Court.

Section 557(1) (d) mentions that in any other case, if the document is addressed to the person to be served and – (i) is given or tendered to him, the same shall be deemed to be duly served.

In the present case, the envelope was duly put to post and was sought to be served but was not claimed by the addressee. The same shall be deemed to be good service in accordance with the aforesaid provision.

The Court is of the opinion that the petitioner was given proper opportunity to defend himself in the demolition proceeding, which the petitioner failed to avail of.

The demolition order passed in June, 2017 has attained finality by now and the same is liable to be implemented in accordance with law.

As it appears that the notice under Sections 544 and 546 of the Kolkata Municipal Corporation Act, 1980 made in the present writ petition mentions a wrong date of the order passed in the demolition proceeding, accordingly, the said notice cannot be acted upon.

The Kolkata Municipal Corporation is directed to take fresh steps for execution of the order of demolition in accordance with law.

The writ petition stands disposed of.

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

(AMRITA SINHA, J.)