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ORDER SHEET

WPO No. 3058 of 2022
IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
ORIGINAL SIDE

DR. ABHIJIT BHATTACHARYA & ANR.
Versus
THE MUNICIPAL COMMISSIONER, KMC & ORS.

BEFORE:
The Hon'ble JUSTICE AMRITA SINHA
Date: 29th November, 2022.

Appearance:
Mr. Soumya Majumder, Adv.
Mr. Arjun Mookerjee, Adv.
Mr. Sourjya Roy, Adv.
...for Petitioners.

Mr. Gurudas Mitra, Adv.
Mr. Jayanta Kumar Dhar, Adv.
...for KMC.

The Court:-The matter relates to unauthorized construction in the premises no. 625, Upen Banerjee Road, BL-12. Flat No.67, Ward No.-132, Borough-XIV, Government Quarter, Kolkata-700 060.

A demolition proceeding was initiated against the construction made by the petitioners and formal order of demolition was passed on 14th September, 2022 by the executive engineer which was approved by the Mayor-in-Council, Kolkata Municipal Corporation on 23rd October, 2022.

When the demolition proceeding was pending consideration before the executive engineer, Building Department, Borough Nos. XIII & XIV, Kolkata Municipal Corporation, the petitioners were directed to deposit a sum of Rs.58,559/- (Rupees fifty eight thousand five hundred fifty nine only) which is 50% of the deposit as per Circular No.16 of 2021-2022 dated 2nd March, 2022.

The petitioners were intimated about the demolition programme by issuing notice under Sections 544 and 546 of the Kolkata Municipal Corporation Act, 1980 dated 25th November, 2022 that the men and agents of the Kolkata Municipal Corporation shall enter the said premises on 30th November, 2022 for demolition of the unauthorized structure as directed to be demolished by the executive engineer, Building Department, Borough Nos. XIII & XIV, Kolkata Municipal Corporation by an order dated 14th September, 2022.

The petitioners submit that the Circular No.16 of 2021-2022 postulates that the security deposit is to be deposited by the person responsible before starting hearing regarding unauthorized construction. The demolition proceeding and the retention proceeding ought to have been decided at the same time.

As the petitioners were directed to deposit 50% of the retention charges, the petitioners were under legitimate expectation that the alleged construction will be permitted to be retained. After the petitioners deposited the said amount, the Mayor-in-Council, Kolkata Municipal Corporation approved the order of demolition passed by the executive engineer, Building Department, Borough Nos. XIII & XIV, Kolkata Municipal Corporation.

It has been submitted that the petitioners were not even permitted the time to prefer an appeal against the order of demolition.

Learned advocate representing the Kolkata Municipal Corporation relies upon Circular No.16 of 2021-2022 and submits that the payment of security deposit does not mean that the structure will be permitted to be retained. As per the said Circular 50% of the calculated amount of the fees

and charges for retention of unauthorized construction is to be deposited prior to the hearing being started.

In the instant case, the matter was heard on 14th September, 2022 and the petitioners were directed to deposit the amount on 19th September, 2022. There is hardly any time gap in between the two dates.

It has been submitted that as retention has not been allowed and the petitioners have been directed to demolish the unauthorized construction, the amount deposited by the petitioners shall be refunded in accordance with the said Circular.

It appears from the submissions made on behalf of the parties that the order dated 14th September, 2022 approved by the Mayor-in-Council, Kolkata Municipal Corporation on 23rd October, 2022 communicated to the petitioners in November, 2022 is an appealable one. There is a time limit of 30 days to challenge the order before the Appellate forum. The time is yet to expire.

The Kolkata Municipal Corporation has in the meantime issued notice under Sections 544 and 546 of the Act.

To permit the petitioners to test the validity of the order of demolition, the Assistant Engineer (Civil), Building Department, Borough Nos. XIII & XIV, Kolkata Municipal Corporation is directed not to give any effect or further effect to the notice under Sections 544 and 546 of the Kolkata Municipal Corporation Act, 1980 till 13th January, 2023. It will be open for the petitioners to raise all points before the appellate forum.

The petitioners are permitted to file appeal before the appellate forum without waiting for issuance of the certified copy of the order of

demolition. Municipal Building Tribunal is directed to register the appeal and proceed with consideration of the appeal without insisting on submission of the certified copy of the order of the demolition. A decision shall be taken by the Municipal Building Tribunal, if any application is filed by the petitioners praying for stay of operation of the impugned order of demolition at the earliest.

In the event the petitioners are unable to obtain an order setting aside/staying or modifying the impugned order of demolition by 13th January, 2023, it will be open for the Corporation to proceed with in accordance with law for giving effect to the order of the demolition.

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

Accordingly, 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.)

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