

Item No. 5

30.01.2023
Ct-24

In The High Court At Calcutta
Constitutional Writ Jurisdiction
Appellate Side

WPA 2057 of 2023
Abdul Nadeem

v.

The Kolkata Municipal Corporation & Ors.

Mr. Raghunath Chakraborty
Ms. Amrita De
... for the petitioner.

Mr. Gurudas Mitra
Ms. Suranjana De Sarkar
... for KMC.

The petitioner is aggrieved by the notice dated January 17, 2023 issued under Sections 544 and 546 of the Kolkata Municipal Corporation Act, 1980.

By the said notice the petitioner was intimated that the Assistant Engineer (Civil) of the Kolkata Municipal Corporation shall enter into the Premises No. 91B, Dr. Lal Mohan Bhattacharjee Road, Ward No. 55, Borough-VI of the Kolkata Municipal Corporation with necessary assistants and workmen on January 31, 2023 for demolishing the unauthorized structure as directed by the Executive Engineer (C)/Building/Borough-VI on February 2, 2022.

It appears from records that the Executive Engineer passed order on February 2, 2022 directing the petitioner, as the person responsible for making unauthorized construction, to demolish the unauthorised structure at the subject premises within

February 17, 2022, failing which the Corporation will proceed for demolition of the unauthorized structure and recover costs of the same.

Being aggrieved by the order of demolition the petitioner preferred an appeal before the Municipal Building Tribunal in February 2022. The said appeal stood dismissed by the learned Tribunal on January 16, 2023. On dismissal of the appeal on January 16, 2023 the impugned notice under Sections 544 and 546 of the Kolkata Municipal Corporation Act, 1980 was issued on January 17, 2023.

The petitioner submits that the petitioner has a remedy to challenge the order passed by the learned Tribunal before the appellate/revisional forum and accordingly, minimum time may be granted to the petitioner.

From the documents annexed to the writ petition it appears that the order of demolition was passed upon giving opportunity of hearing to the person responsible. The person responsible was found absent on two occasions when the hearing was scheduled.

The person responsible preferred an appeal before the Municipal Building Tribunal and by order dated February 16, 2022 the petitioner was directed to issue notice with copy of the memorandum of appeal upon the respondents by registered post with A/D as well as by process. The appeal was fixed on March 21, 2022 for admission hearing and filing the certified copy.

I have perused the orders passed by the learned Tribunal on March 21, 2022, April 28, 2022, June 13, 2022, July 13, 2022, August 17, 2022, September 13,

2022, November 2, 2022, December 6, 2022, January 2, 2023 and the order dismissing the appeal on January 16, 2023.

It appears that the appellant being the petitioner herein deliberately did not take steps for issuance of the notice upon the respondents.

The learned Tribunal dismissed the appeal for non-compliance of the Tribunal's order.

On the appeal being dismissed, the Corporation took steps for issuance of notice under Sections 544 and 546 so that the order of demolition may be implemented.

The Court does not find any error on the part of the Executive Engineer (C)/Building Department, Borough-VI to take steps for implementation of the order of demolition upon dismissal of the appeal by the learned Tribunal.

It cannot be expected that the Executive Engineer of the Corporation will sit tight over the matter and not implement the order of demolition which was passed way back on February 2, 2022 despite the appeal being dismissed by the Tribunal.

The petitioner had enough time to take appropriate steps before the learned Tribunal but for reasons best known to the petitioner failed to do so.

There is no apparent error on the face of record calling for interference in the matter.

The writ petition accordingly stands dismissed.

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

Urgent certified photocopy of this order, if applied for, be supplied to the parties expeditiously on compliance of usual legal formalities.

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(Amrita Sinha, J.)