

Item No. 4

31.01.2023
Ct-24

In The High Court At Calcutta
Constitutional Writ Jurisdiction
Appellate Side

WPA 2054 of 2023
Sk. Khalldur Rahaman
v.

The Kolkata Municipal Corporation & Ors.

Mr. Raghunath Chakraborty
Mr. Syed Nasirul Hossain
Md. Apzal Ansari
... for the petitioner.

Mr. Gurudas Mitra
Mr. Debjit Mukherjee
Ms. Suranjana Dey Sarkar
Ms. Dipanwita Ganguly
... for KMC.

The petitioner is aggrieved by the notice under Sections 544 and 546 of the Kolkata Municipal Corporation Act, 1980 issued by the Executive Engineer(C), Building Department, Borough-VI on January 17, 2023.

By the said notice the petitioner has been intimated that the men and agents of the Kolkata Municipal Corporation shall enter the premises no. 91C, Dr. Lal Mohan Bhattacharjee Road, Ward No. 55, Borough-VI of the Kolkata Municipal Corporation on February 2, 2023 for demolishing the unauthorized structure in accordance with the order of demolition passed by the Executive Engineer(C)/Bldg./Borough-VI on February 2, 2022.

It appears that the petitioner preferred an appeal challenging the order of demolition before the Municipal Building Tribunal, Kolkata Municipal Corporation on

February 16, 2022 being Appeal No. 25 of 2022. The said appeal is pending consideration till date. The next date for consideration of the appeal is March 2, 2023.

The petitioner contends that the Corporation ought not to have issued the impugned notice as the order of demolition is under scrutiny before the Municipal Building Tribunal.

Learned advocate representing the Kolkata Municipal Corporation submits that the order was passed by the Executive Engineer way back on February 2, 2022 and there is no order staying operation of the order of demolition till date. The petitioner is yet to file an application for stay in connection with the appeal pending before the Tribunal.

It has been submitted that till the order is stayed by the competent forum, the Corporation is duty bound to act in accordance with the same.

It has further been submitted that there has been massive unauthorized construction and despite the order of demolition, the petitioner is continuing with the unauthorized construction at a very fast pace with a view to hand over possession and create third party rights.

It has been submitted that necessary direction may be passed restraining the petitioner from continuing any further construction work and not to hand over possession of the unauthorized structure in favour of any other party.

I have heard the submissions made on behalf of both the parties. It appears that the order of demolition has been challenged before the appellate forum and the

appeal Court is yet to pass any decision in the matter. The appeal was filed on February 16, 2022 and till date the case records have not been received by the Tribunal from the department of the Corporation. Due to non-availability of the case records, the Corporation had to adjourn hearing of the appeal on three consecutive dates.

It will not be proper at this stage to execute the order of demolition during the pendency of the appeal as status quo ante cannot be maintained if the Tribunal ultimately sets aside the order of demolition passed by the Executive Engineer.

Accordingly, the Executive Engineer(C), Building Department, Borough-VI is directed not to give any effect and or further effect to the impugned notice under Sections 544 and 546 issued on January 17, 2023 till March 31, 2023 or until further order, whichever is earlier.

The department of the Corporation is directed to forward the case records to the Municipal Building Tribunal immediately.

It will be open for the petitioner to file appropriate application praying for stay of the order of demolition in accordance with law, if so advised.

The Tribunal is directed to decide the prayer of the petitioner for stay of the demolition proceeding at the earliest.

The petitioner is restrained from making any construction at the subject premises and further restrained from handing over possession of any part or

portion of the subject premises till the matter is conclusively decided by the Tribunal.

The Officer-in-Charge, Entally Police Station is directed to keep strict vigil over the property and ensure that construction in any manner whatsoever is not made at the subject premises and physical and/or symbolic possession is not given to any third party till the matter is disposed of by the Tribunal.

The writ petition stands disposed of.

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

sh

(Amrita Sinha, J.)