

Item No.7

In The High Court At Calcutta
Constitutional Writ Jurisdiction
Appellate Side

14.07.2023
Ct-24

WPA 2105 of 2023

Sk. Salim Ali

v.

State of West Bengal & Ors.

Mr. Souma Subhra Ray

Mr. Mostafijur Rahaman

Mr. Tarique Masood

...For the petitioner.

Mr. Gopal Chandra Das

Ms. Manisha Nath

...For KMC.

Ms. Rupsha Chakraborty

... for the State.

The matter relates to the premises no. B/2/H/3, Hossain Shah Road under Ward No. 78, Borough-IX of the Kolkata Municipal Corporation. The structure at the said premises is suffering an order of demolition passed by the Special Officer (Building) on August 4, 2022 under Section 400(1) of the Kolkata Municipal Corporation Act, 1980.

For execution of the order of demolition, notice under Sections 544 and 546 of the Kolkata Municipal Corporation Act was issued in the month of January 2023 and part demolition was carried out by the Corporation.

It appears that being aggrieved by the order of demolition the petitioner approached this Court by filing the instant writ petition in the month of January 2023. During pendency of the writ petition a further notice

under Sections 544 and 546 has been issued on June 27, 2023 intimating the petitioner that the assistants and workmen of the Corporation will visit the subject premises today i.e. July 14, 2023 for implementing the order of demolition dated August 4, 2022.

Immediately upon receipt of the said notice, the petitioner preferred an appeal before the statutory appellate forum being BT No. 141 of 2023.

The petitioner submits that as part demolition had already taken place, some breathing time be given to the petitioner to proceed with the appeal before the appellate forum.

Learned advocate representing the Corporation submits that the petitioner failed to approach the statutory appellate forum within the stipulated time period. Part demolition has been conducted and the balance unauthorized construction is required to be demolished.

Learned advocate for the petitioner submits that no notice or opportunity of hearing was given to the petitioner prior to passing the order of demolition by the Special Officer.

On a perusal of the order of demolition dated August 4, 2022 it appears that the person responsible failed to turn up on the scheduled dates of hearing. Without proper evidence the Court is not in a position to ascertain as to whether the notice of hearing was properly served upon the petitioner or not.

Admittedly, the petitioner was not heard at the time of passing the order of demolition. Part demolition

has already taken place and balance demolition is required to be undertaken.

In the meantime, as the petitioner has approached the appellate forum. Accordingly, the men and agents of the Corporation are restrained from proceeding any further with the demolition of the balance unauthorized construction till November 30, 2023 or until further order whichever is earlier.

In the event, the petitioner fails to obtain any order of stay/setting aside/modification of the order of demolition then, it will be open for the Corporation to proceed with the demolition work.

The petitioner, however, is restrained from doing any further construction work till November 30, 2023 or until further order, whichever is earlier.

The Officer-in-Charge, Ekbalpore Police Station is directed to keep strict vigil over the property to ensure that no construction in any manner whatsoever is carried on at the subject premises.

The petitioner is also restrained from transferring/alienating the portions constructed unauthorizedly and suffering the order of demolition until further order.

The Executive Engineer of the concerned borough is directed to immediately transmit all records of the instant case to the Municipal Building Tribunal so that the matter may be decided without any delay.

Report filed by the Officer-in-Charge, Ekbalpore Police Station be retained with the records.

The writ petition stands disposed of.

Urgent photostat certified copy of this order, if applied for, be given to the parties on usual undertaking.

Sh.

(Amrita Sinha, J.)