

Item No.3

In The High Court At Calcutta
Constitutional Writ Jurisdiction
Appellate Side

15.02.2023
Ct-24

WPA 3360 of 2023
Ashok Sengupta
v.
The State of West Bengal & Ors.

Mr. Supratim Basu
Ms. Bratati Pramanick
... for the petitioner.

Ms. Sima Chakraborty
... for KMC.

The petitioner is suffering an order of demolition in respect of unauthorized construction at 38/1A/87, Manicktala Main Road, Ward No. 14, Borough-III under the jurisdiction of the Kolkata Municipal Corporation.

A demolition proceeding was initiated and opportunity was given to the petitioner to represent his case. The Executive Engineer (C)/Building of the concerned borough passed an order of demolition on January 6, 2023 and communicated the same to the petitioner by memo dated January 7, 2023.

A notice under Sections 544 and 546 of the Kolkata Municipal Corporation Act, 1980 was issued by the said authority on February 1, 2023 intimating that the men and agents of the Corporation will enter the subject premises on February 16, 2023 for demolishing the unauthorized structure in terms of the direction passed by the Executive Engineer.

Being aggrieved by the order of demolition passed by the Executive Engineer, the petitioner preferred appeal before the Municipal Building Tribunal being BT Appeal No. 32 of 2023 within the statutory time period.

The petitioner submits that as the appeal has been filed within the time limit prescribed in law, accordingly the Corporation ought not to take steps for demolition of the structure which has been held to be unauthorized by the concerned Executive Engineer.

Upon hearing the submission made on behalf of the petitioner and upon perusal of the materials available on record, it appears that an appeal against the order of demolition filed within the statutory period is yet to be considered by the appellate forum.

The person aggrieved ought to be given an opportunity to defend his case before the appellate authority.

As the appeal is pending consideration, demolition of the alleged unauthorized construction, if made, will render the appeal infructuous.

Accordingly, the Executive Engineer (C)/Building Department, Borough-III is directed not to give any effect and/or further effect to the notice under Sections 544 and 546 of the Kolkata Municipal Corporation Act, 1980 dated February 1, 2023 till May 19, 2023 or until further order, whichever is earlier.

The petitioner is directed to take steps for hearing of the appeal before the Municipal Building Tribunal.

The Tribunal is requested to proceed hearing of the application for stay which was filed by the petitioner

along with the appeal and pass necessary order prior to 19th May, 2023.

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.

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(Amrita Sinha, J.)