

Item No.4

In The High Court At Calcutta
Constitutional Writ Jurisdiction
Appellate Side

15.02.2023
Ct-24

WPA 3362 of 2023
Aloke Ghosh @ Gopal Ghosh
v.
The State of West Bengal & Ors.

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

Mr. Rudranil Dey
Mr. Dwijadas Chakraborty
... for KMC.

Mr. Raja Saha
Mr. Prantik Garai
... for the State.

This is the third occasion that the petitioner is practically compelled to approach this Court.

The facts of the case are recorded in the order dated February 11, 2022 and September 8, 2022 passed in WPA 2206 of 2022 and WPA 20471 of 2022 respectively.

A second notice under Sections 544 and 546 of the Kolkata Municipal Corporation Act, 1980 has been issued by the Executive Engineer(C), Building Department, Borough-I on February 6, 2023. By the said notice the petitioner has been informed that the men and agents of the Corporation will enter the subject premises on February 16, 2023 for demolishing the unauthorized construction i.e. the entire two storied RCC frame structured building constructed without any sanction.

The order of demolition passed by the Executive Engineer (Building) on February 3, 2022 has been assailed in appeal before the Municipal Building Tribunal in BT Appeal No. 55 of 2022.

From the order sheet of the Municipal Building Tribunal it appears that on April 12, 2022 direction was passed for issuance of notice with copy of the memo of appeal etc. upon the respondents and date was fixed on May 24, 2022 for S/R, A/D.

The order dated May 24, 2022 mentions that case records have not yet received from the Corporation. Date was fixed on August 1, 2022. On August 1 and August 3, 2022 the case was again adjourned for want of case records till November 1, 2022. Similarly, on November 1, 2022 the case was adjourned till January 12, 2023 and on January 12, 2023/January 13, 2023 the appeal has been adjourned till March 28, 2023 for production of case records.

In the second writ petition filed by the petitioner the Court recorded that, even though dates were fixed for hearing of the appeal by the Tribunal, the same could not be heard out due to want of case records.

The Court further recorded that the statutory appeal is pending consideration before the Tribunal and the petitioner was given liberty to apply before the Tribunal for obtaining any stay. The Corporation was directed not to take any coercive steps pursuant to the impugned notice issued on September 1, 2022 under Sections 544 and 546 of the Kolkata Municipal Corporation Act, 1980.

From the order sheet of the Tribunal it appears that despite repeated opportunities, case records were not produced by the Corporation.

The Tribunal ought to have taken measures against the Corporation for production of the case records and ought to have taken a decision with regard to the prayer for stay filed by the petitioner. The Corporation failed to appreciate that due to pendency of the appeal, the structure which was held to be unauthorized cannot be demolished.

From the order passed by the Tribunal there is no reflection as to whether the petitioner, at all, prayed for stay of operation of the order of demolition. Only a rubber stamp has been affixed in the order sheet mentioning the next date.

The petitioner is given liberty to press the application for stay that has been filed in the pending appeal and the Tribunal is directed to take a decision with regard to the said application seeking stay positively by March 30, 2023.

The Tribunal is requested to consider the hearing of the appeal simultaneously with the application for stay.

The Corporation is directed to immediately transmit the case records before the Tribunal so that the matter can be effectively dealt with on the next date.

The Executive Engineer (C), Building Department, Borough-I is directed not to proceed with the impugned notice under Sections 544 and 546 of the Kolkata Municipal Corporation Act, 1980 dated February 6, 2023

till April 28, 2023 or until further order, whichever is earlier.

The writ petition stands disposed of.

Affidavit-of-service filed in Court today is taken on record.

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.)