

Ct. 24
Item No.15
11.07.2023
(Suvendu)

WPA 14967 OF 2023

**Subhajit Saha
Vs.
State of West Bengal & Ors.**

Mr. Rachit Lakhmani
Mr. Mostafizur Rahaman
Ms. Afreen Begum
Mr. Sanchayan Sinha
.....for the petitioner

Mr. Srijan Nayak
Ms. Rituparna Maitra
... for the KMC

Mr. S.T. Mina
Mr. Parikshit Goswami
...for the State

The petitioner is aggrieved by a notice issued on 17th June, 2023 under Sections 544 & 546 of the Kolkata Municipal Corporation Act, 1980 intimating the petitioner that the men and agents of the Corporation will enter the premises No. 49/2A/1, Manasatala Lane, Ward No. 77, Borough IX, Kolkata Municipal Corporation on 28th June, 2023 for the purpose of demolishing the unauthorized structure as per the order of demolition passed by the Special Officer (Building) on 9th January, 2023 under Section 400(1) of the Kolkata Municipal Act, 1980.

The specific case of the petitioner is that the order of demolition was not served upon him.

Learned advocate representing the Kolkata Municipal Corporation has obtained instruction from the concerned engineers of the Corporation and has filed a report before this Court signed by the Executive Engineer (C) (Building), Borough IX dated 11th July, 2023 which mentions that a plan was sanctioned for construction of a three storied building in November, 2021. As the construction was made in deviation of the sanctioned plan, a Stop Work Notice under section 401 of the Kolkata Municipal Act, 1980 was served upon the person responsible in December, 2021 with intimation to the local Police Station. The file was processed under Section 400(1) of the Act. Hearing notice was served and one learned advocate namely, Mr. M. Rahaman, represented the petitioner at the time of hearing on 24th November, 2022 by filing Vakalatnama. The Special Officer (Building) passed an order of demolition on 9th January, 2023 and for implementation of the said order of demolition, a notice under Sections 544 and 546 of the Act was issued on 14th June, 2023.

From the instruction forwarded by the engineer of the Corporation, it appears that there is no

mention with regard to the service of the order of demolition upon the person responsible. There is no evidence to show that the order of demolition dated 9th January, 2023 was served upon the person responsible. The order of demolition dated 9th January, 2023 has not been served upon the person responsible till date.

Any order passed under Section 400(1) of the Act is an appellable one. Any party aggrieved by the order passed under the aforesaid provision of the Act has a statutory right to prefer appeal before the appellate forum. Till the order of demolition is communicated to the person responsible, the aggrieved party is not in a position to approach the appellate forum for relief. It is absolutely improper on the part of the Corporation to implement the order of demolition without serving a copy of the said order of demolition upon the person responsible. The person responsible for making unauthorized construction ought to be made aware of the portion(s) which is/are required to be demolished being held unauthorized. Till the same is intimated to the person responsible, the order of demolition ought not to be implemented.

It appears that the officers of the Corporation issued the notice intimating the demolition

programme prior to serving the order of demolition. The same is impermissible in law.

In view of the above, the impugned notice issued on 17th January, 2023 under Sections 544 and 546 of the Kolkata Municipal Act, 1980 is set aside and quashed.

The concerned officer of the Corporation is directed to immediately communicate the order of demolition, if any, to the petitioner or the person responsible for making such unauthorized construction.

The petitioner in the instant writ petition has also prayed for a direction upon the respondent authorities to regularize the minor deviation in terms of the revised plan proposal upon consideration of the representations submitted by the petitioner seeking such regularization.

Prior to implementing the order of demolition, if any, the competent authority of the Corporation shall take into consideration the prayer of the petitioner for regularization of the unauthorized portion in terms of the revised plan proposal submitted by the petitioner.

Learned advocate appearing for the petitioner is directed to forward a copy of the revised plan proposal and the representations dated 20th May,

2023 and 21st June, 2023 to the Executive Engineer(C)(Building) of the concerned Borough for taking a decision in the matter.

The writ petition stands disposed of.

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

(Amrita Sinha, J.)