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*Ct No24* **28.06**  
*AGM* **2023**

**In the High Court At Calcutta  
Constitutional Writ Jurisdiction  
Appellate Side**

**WPA 15168 of 2023**

**Narayan Chandra Das  
Vs  
The Kolkata Municipal Corporation & Ors.**

**Mr. Gopal Chandra Das  
Mr. Mahaboob Ahmed  
... for the Petitioner.**

**Mr. N. C. Bihani  
Ms. Debangana Dey Nayak  
... For the K.M.C.**

The matter relates to the premises no. 808  
Kasthadanga Road, Ward No. 127, Borough- XIV  
under jurisdiction of the Kolkata Municipal  
Corporation.

It appears that a demolition proceeding was  
initiated against the aforesaid premises. The Special  
Officer (Building) passed order on 9<sup>th</sup> January, 2023  
permitting retention of a part of the construction and  
directing demolition of a portion of the same.

The petitioner being aggrieved by the said order  
intends to prefer an appeal before the appellate  
forum. An application for obtaining certified copy of  
the order was filed before the Executive Engineer of  
the concerned borough on 10<sup>th</sup> May, 2023 followed by  
a reminder on 26<sup>th</sup> June, 2023. The certified copy is

yet to be delivered.

The Assistant Engineer of the concerned borough has issued a notice under Sections 544 and 546 of the Kolkata Municipal Corporation, 1980 intimating the petitioner that he along with the men and agents of the Corporation will enter the subject premises today, i.e., 28<sup>th</sup> June, 2023 for demolition of the unauthorised construction marked in the demolition sketch.

The specific contention of the petitioner is that the demolition sketch has not been forwarded. Without the certified copy the appeal cannot be filed before the appellate authority.

The petitioner relies upon an order passed by this Court on 2<sup>nd</sup> September, 2022 in WPA 20175 of 2022 in support of his case.

Learned advocate representing the KMC has obtained instruction from the engineers of the concerned borough wherefrom it appears that the order of part demolition and part retention was passed on 9<sup>th</sup> January, 2023 and the same was approved in the MIC resolution on 24<sup>th</sup> April, 2023.

The department issued letter to the person responsible on 4<sup>th</sup> May, 2023 attaching an order of the Special Officer (Building). As the order of the Special Officer (Building) is yet to be executed,

accordingly, the notice under Sections 544 and 546 of the KMC Act has been issued.

It appears that the impugned notice under Sections 544 and 546 of the KMC Act was issued by the Assistant Engineer delegating power to himself for the purpose of entering and causing demolition of the unauthorised construction.

It appears that the Assistant Engineer himself has delegated the power to him to enter the premises. One cannot delegate power to himself.

In view of the above, the impugned notice under Sections 544 and 546 dated 16<sup>th</sup> June, 2023 is set aside.

It appears from the submissions made on behalf of both the parties that the certified copy of the order of the Special Officer is yet to be supplied to the petitioner.

For the purpose of filing an appeal before the appellate authority, certified copy of the impugned order is required. On account of non-availability of the certified copy, the petitioner is not in a position to prefer the appeal.

According to the provisions of law, the order of demolition is an appealable one and the petitioner has a right to prefer the appeal within the stipulated time period. As the certified copy is not issued, the

appeal cannot be preferred.

Accordingly, the right of the petitioner to prefer the appeal ought not to be taken away.

The Executive Engineer of the concerned borough is directed to take immediate steps for supplying the certified copy of the impugned order of demolition to the petitioner subject to payment of necessary charges.

It will be open for the petitioner to prefer the appeal against the impugned order of demolition before the appellate forum within a fortnight from the date of receipt of the said certified copy.

The concerned officer may take steps for demolition of the unauthorised structure in the event the petitioner fails to obtain any order of stay/modification/variation of the impugned order of demolition prior to 30<sup>th</sup> November, 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.

**( Amrita Sinha, J.)**