

05.07
2023

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

WPA 15796 of 2023

**Md. Feroz
Vs
Kolkata Municipal Corporation & Ors.**

**Mr. Arka Maiti
Ms. Gulsanwara Pervin**

... for the Petitioner.

Mr. Arijit Dey

... For the KMC.

None appears on behalf of the Corporation despite service. Affidavit of service taken on record.

On the request of the Court Mr. Arijit Dey, learned advocate who represents the Corporation before this Court has taken necessary instruction from the concerned officer. The engagement of Mr. Arijit Dey, learned advocate be regularised by the Corporation.

The petitioner is aggrieved by the impugned notice issued on 23rd June, 2023 under Sections 544 and 546 of the Kolkata Municipal Corporation Act, 1980 intimating that the men and agents of the Corporation will enter the premises no. 25A, Circus Avenue, ward No. 64, Borough – VII on 5th July, 2023 for demolishing the unauthorised structure in terms of the order passed by the Special Officer (Building) on 28th February, 2023 under Section 400(1) of the KMC Act, 1980.

The petitioner being aggrieved by the order of demolition has preferred an appeal before the statutory appellate forum being BT Appeal No. 119 of 2023 on 29th May, 2023.

It has been submitted that the appeal is pending consideration before the Municipal Building Tribunal till date.

It has further been submitted that if the alleged

unauthorised construction is demolished prior to the appeal being decided by the appellate forum, the appeal itself will be rendered infructuous and the petitioner will be left remediless.

Learned advocate representing the KMC, submits upon instruction that, the appeal was preferred beyond the prescribed period of limitation. There is no order staying operation of the impugned order of demolition.

From the submissions made on behalf of both the parties and upon perusal of the materials on record, it appears that an appeal challenging the order of demolition was filed before the Municipal Building Tribunal and the same is pending consideration till date.

At this stage, it will not be proper for the Corporation to execute the order of demolition as the said order of demolition is under judicial scrutiny of the appellate forum.

In view of the above, the men and agents of the KMC are restrained from giving any effect and/or further effect to the impugned notice issued under Sections 544 and 546 of the KMC Act till 30th November, 2023 or until further order whichever is earlier.

The Corporation is directed to immediately transmit the records of the present case before the appellate forum so that the appeal may be decided by the Tribunal without any further delay.

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.)