

SL 72
19.07.2023
AGM

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

W.P.A 16954 of 2023

**Jan Md. Ansari & Anr.
-versus
The Municipal Chairman, KMC & Ors.**

**Mr. Sekhar Mukherjee
Mr. Anindya Chowdhury
Mr. Subhajit Mukherjee
Mr. Rizwan Ansari
...For the Petitioners.**

The premises no. 18C, Mominpore Road, Ward No. 78, Borough- IX is suffering an order of demolition passed by the Special Officer (Building) on 25th October, 2019.

It appears that the petitioner, being the person responsible for making construction appeared in the hearing before the Special Officer and made necessary submission seeking regularization of the construction made. It is admitted that construction had been made without obtaining the prior sanctioned plan.

The Special Officer (Building) directed that the additional floor i.e., the top floor which was constructed beyond the sanctioned plan be demolished within thirty days, failing which the Corporation will be at liberty to demolish the same at the cost and risk of the person responsible.

Apart from the top floor, the other deviations were treated as minor unauthorised work and the Special Officer permitted regularization and retention of

the said deviations subject to the conditions set out in the order of the Special Officer.

It appears that the petitioners neither complied the conditions mentioned in the order for retention nor demolished the additional floor.

The Corporation issued notice under Sections 544 and 546 of the Kolkata Municipal Corporation Act, 1980 intimating that the demolition programme will take place today, that is, 19th July, 2023.

Learned advocate appearing for the petitioners submits that an appeal has been preferred before the Municipal Building Tribunal lately along with an application seeking condonation of delay in preferring the appeal. Prayer has been made to stay the demolition work till order is passed by the Tribunal in the pending appeal.

It appears from the submission made on behalf of the petitioners and upon perusal of the documents available on record that the order of demolition of the unauthorised construction and retention of the minor unauthorised deviations was passed in October 2019.

By now the said order attained finality. The petitioner failed to act in accordance with the directions passed in the said order. No appeal was preferred before the statutory appellate forum within the stipulated time period. Appeal filed more than three years and six months after the order of demolition is yet to be admitted by the appellate forum. Till the delay in filing the appeal is condoned and the appeal is formally admitted it cannot be said that the appeal is pending consideration.

At this stage the relief sought for by the petitioners seeking stay of the demolition programme cannot be accepted.

The writ petition fails and is hereby dismissed.

Leave to file affidavit-of-service in the course of this day.

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

(Amrita Sinha, J.)