

02
25.07.2023
d.p.

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

W.P.A 17595 of 2023

**Bharat Sarkar
-versus
The Kolkata Municipal Corporation & Ors.**

**Mr. Gopal Chandra Das,
Mr. Mahaboob Ahmed.
...For the Petitioner.**

**Ms. Sima Chakraborty,
Mr. Debanjana Dey Nayak.
...For KMC.**

**Ms. Tuli Sinha.
...For the Respondent No.6.**

The petitioner challenges the notice under Sections 544 and 546 of the Kolkata Municipal Corporation Act, 1980 dated 11th July, 2023 issued by the Executive Engineer (Civil)/Building Department, Borough-III, intimating that the assistants and workmen of the Kolkata Municipal Corporation will enter the premises no. 247/H/5, Manicktala Main Road, Ward No.-29, Borough-III of the Kolkata Municipal Corporation for carrying out the demolition work of the unauthorised structure of five storied RCC building constructed without any sanction plan as per the order of the Executive Engineer dated 13th March, 2023 under Section 400(1) of the Kolkata Municipal Corporation Act, 1980.

Specific case of the petitioner is that no notice of hearing was issued to the petitioner at the time of adjudication of the demolition proceeding.

It has been submitted that the petitioner got knowledge of the order of demolition only after issuance of the impugned notice under Sections 544 and 546 of the Kolkata Municipal Corporation Act, 1980.

It has also been submitted that after getting knowledge of the order of demolition, application was made for obtaining certified copy of the said order.

The petitioner intends to prefer statutory appeal before the appellate forum.

It has been submitted that the property in question is a thika property and the predecessor-in-interest of the petitioner purchased the same long back.

Learned advocate appearing for the Kolkata Municipal Corporation is yet to receive any instruction in the matter.

Report has been filed by the Additional Officer-in-Charge, Narkeldanga Police Station, Kolkata signed on 24th July, 2023. The same is taken on record.

From the order of demolition dated 13th March, 2023, it appears that the person responsible made illegal construction of about 457.2 Sq.mt.

The demolition order mentions that a show cause notice was issued and appearance was made on behalf of the person responsible on 13th March, 2023.

Learned advocate appearing for the Corporation has failed to produce any document to satisfy the Court that notice of hearing was actually served upon the person responsible.

The order of demolition is an appealable one. The time period to prefer the appeal has expired. The petitioner contends that he was not aware of the order of demolition. There is nothing on record to suggest that the order of demolition was communicated to the petitioner.

On receiving the notice under Sections 544 and 546 of the Act, the petitioner claims to have got knowledge of the order and thereafter applied for the certified copy with intention to move the appellate forum.

As the petitioner intends to test the validity of the order of demolition, accordingly, one opportunity ought to be given to the petitioner.

In view of the above, the Executive Engineer of the concerned Borough is directed not to take any steps and/or further steps in connection with the notice issued under Sections 544 and 546 of the Act and not to proceed with the implementation of the order of demolition till 30th November, 2023 or until further order whichever is earlier.

In the event the petitioner fails to obtain any order staying/vacating/modifying the order of demolition within the time as stipulated hereinabove, then it will be open for the Corporation to proceed with the matter in accordance with law.

The Executive Engineer of the concerned Borough is directed to transmit the records of the instant case to the Tribunal immediately after getting knowledge of the filing of the appeal.

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.)