

June 16, 2023
Sl. No.09
Court No.19
s.biswas

CO 3099 of 2022

Soumendra Kristo Dutta and another
vs.
Sitaram Jalan

Ms. Ajeyaa Chowdhury
Mr. Dipendra Nath Chunder
... for the petitioners
Ms. Purnima Ghosh
... for the opposite party
Mr. Barin Banerjee
Ms. Sima Chakraborty
... for the K.M.C.

The affidavit-in-opposition filed on behalf of the
Kolkata Municipal Corporation is taken on record.

The order impugned before this court is an
order passed by the Special Officer (Building) of the
Kolkata Municipal Corporation in connection with
Demolition Case No.D-119/B-VII/21-22.

By the said order dated March 14, 2022, the
Special Officer (Building), Kolkata Municipal
Corporation, as a delegatee of the Commissioner as
per the Rules, passed an order of retention of the
renovated mezzanine floor on payment of fees and
charges under Section 400(1) of the Kolkata
Municipal Act, 1980 (hereinafter referred to as 'the
Act of 1980'). The order also provided that any
person aggrieved by the order under Section 400(1)
of the said Act of 1980, may prefer an appeal before
the learned Municipal Building Tribunal, Kolkata
within a stipulated time. The order of the Special
Officer was passed pursuant to a direction of this

court directing the Commissioner of the Kolkata Municipal Corporation to take steps with regard to the complaint of unauthorized construction. The officer, authorized under the provision of the Act of 1980 and rules framed thereunder, passed the order of retention.

The petitioners are the landlord and are aggrieved by such order, on the following grounds:

- a) Hearing was not given to the petitioner;
- b) The order was passed contrary to law.

The Special Officer (Building), Kolkata Municipal Corporation, was intimated that on account of death of a near relative of the landlord, the landlord was not able to attend the hearing.

This application was initially admitted by this court by another Co-ordinate Bench on the ground of violation of principle of natural justice. But, it appears to the court that the order impugned is an appealable order and the fact that the appeal lies from the said order has also been mentioned in the order impugned. The provision of Section 400(3) of the Act of 1980 is quoted below:

“400(3) : any person aggrieved by an order of the Municipal Commissioner made under sub-section (1) may, within thirty days from the date of the order, prefer an appeal against the order to the Municipal Building Tribunal appointed under Section 415.”

The petitioners are at liberty to prefer an appeal before the Municipal Building Tribunal in accordance with law. The fact that the petitioners were pursuing their remedy before the wrong forum shall be pleaded, to explain the delay. The authority shall not take any steps with regard to regularization for a period of four months. In the meantime, the petitioners shall be at liberty to obtain necessary interim orders in accordance with law, from the Tribunal. Thereafter, the corporation authority shall act and proceed on the basis of any order that may be passed by the learned tribunal in the appeal to be preferred by the petitioners.

This court has not gone into the merits of the issues involved. The person responsible for the construction shall be at liberty to contest the proceedings before the learned Tribunal. The learned tribunal shall proceed independently.

The revisional application is disposed of.

All the parties are directed to act on the basis of the server copy of the order.

(Shampa Sarkar, J.)