

Item No.10

In the High Court At Calcutta
Constitutional Writ Jurisdiction
Appellate Side

18.09.2023
Ct-24

WPA 22549 of 2023
Alok Paul @ Aloke Kumar Paul & Anr.

v.

The Kolkata Municipal Corporation & Ors.

Mr. Gopal Chandra Das
Mr. Mahaboob Ahmed
... for the petitioners.

Mr. Suman Sengupta
Mr. Saikat Chatterjee
... for the State.

Mr. Alak Ghosh
Mr. Atis Kumar Bishwas
... for KMC.

Being aggrieved by the order of demolition passed by the Executive Engineer(C)/Building, the petitioners preferred appeal before the statutory appellate forum and the said appeal is pending consideration.

The petitioners are presently aggrieved by the notice issued under Sections 544 and 546 of the Kolkata Municipal Corporation Act, 1980 by the Executive Engineer(C)/Building, Borough-III dated August 19, 2023 mentioning that the Assistant Engineer(C) and Sub-Assistant Engineer(C) will enter into the subject premises being 247/H/4, Satin Sen Sarani, Ward No. 029, Borough-III with necessary assistants and workmen on September 19, 2023 for demolishing the unauthorized structure as per the direction of the Executive Engineer.

Learned advocate for the petitioners relies upon the Municipal Commissioner's Circular No. 24/2021-22 dated July 8, 2021 that the power to enter and inspection to enter land, break into building, etc. under Sections 544 and 546 of the Kolkata Municipal Corporation Act, 1980 has been delegated to the Assistant Engineer(C)/Building of the concerned borough/ward.

Specific case of the petitioners is that the Executive Engineer is not the competent authority to issue the notice under Section 544 and 546 of the Kolkata Municipal Corporation Act, 1980.

Prayer has been made for setting aside the impugned notice issued under Sections 544 and 546 dated August 19, 2023.

Learned advocate representing the Corporation submits that in view of an order passed by the Court, presently, the Executive Engineer is the appropriate authority for issuing notice under Sections 544 and 546 of the Kolkata Municipal Corporation Act, 1980.

The learned advocate representing the Corporation has failed to produce before this Court the formal delegation of power by the Municipal Commissioner to the Executive Engineer to act in terms of Sections 544 and 546 of the Act. On the contrary, learned advocate representing the petitioners has relied upon the Municipal Commissioner's Circular No. 24/2021-22 in support of the submission that the Assistant Engineer(C)/Building of the concerned borough/ward is the competent authority to issue such notice.

In view of the above, the Court is of the opinion that the impugned notice has been issued by the

Executive Engineer(C)/Building, Borough-III without any jurisdiction. The same is liable to be set aside and is accordingly set aside.

It will be open for the Corporation to issue appropriate notice in accordance with law for execution of the order of demolition.

The writ petition stands disposed of.

Affidavit-of-service filed in Court today is taken on record.

Instruction filed by the respondent no. 6 be retained with the records.

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

Sh

(Amrita Sinha, J.)