

Item No. 5

In the High Court At Calcutta
Constitutional Writ Jurisdiction
Appellate Side

09.10.2023
Ct-24

WPA 23194 of 2023
Kalyan Saha

v.

The Kolkata Municipal Corporation & Ors.

Mr. Sutirtha Das
Mr. Sourojit Mukherjee
... for the petitioner.

Mr. Debjit Mukherjee
Mr. Kaustav Bhattacharya
... for KMC.

Mr. Supratic Roy
Mr. Shubhojyoti Dutta
Mr. Joydeep Dey
Mr. Deb Kumar Deashi
... for the respondent no. 6.

The order passed by the Special Officer (Building), Kolkata Municipal Corporation on March 30, 2021 communicated to the petitioner by communication dated August 9, 2023 is impugned in the present writ petition.

It has been submitted that the proceeding under Section 400(1) of the Kolkata Municipal Corporation Act, 1980 was conducted without affording any opportunity of hearing to the petitioner.

The structure in question is an extremely old one and the petitioner admittedly does not have the sanctioned plan in support of the said construction.

The jurisdiction of the Special Officer (Building) to pass order of demolition has been questioned.

It has been submitted that as the order was passed in the year 2021 but communicated to the petitioner after such a long delay, the same ought not to be acted upon with such emergency. The petitioner apprehends that the demolition may be conducted very soon, as the notice under Sections 544 and 546 of the Kolkata Municipal Corporation Act, 1980 has been issued intimating that the demolition work will commence on October 11, 2023 and October 12, 2023 onwards.

Learned advocate representing the private respondent i.e. the complainant submits that the writ petition is liable to be dismissed on account of gross suppression of materials facts.

It has been submitted that the petitioner raised construction over the common passage. Two earlier writ petitions filed by the private respondent have been completely suppressed by the petitioner. Order was passed by this Court in WPA 3917 of 2023 & WPA 10436 of 2022.

It has been contended that only for the purpose of stalling the process of demolition of the unauthorized construction, the present writ petition has been filed at the very last stage.

Learned advocate representing the Corporation has obtained instruction from the engineers of Borough-III wherefrom it appears that stop work notice under Section 401 of the Kolkata Municipal Corporation Act, 1980 was served upon the person responsible on November 23, 2019 with intimation to the police on November 25, 2019. Notice under Section 400(1) of the Kolkata Municipal Corporation Act, 1980 was served on

June 20, 2020. Hearing took place on several occasions and on March 30, 2021 order was passed by the Special Officer (Building) for part demolition and part retention of the subject construction. The order dated March 30, 2021 was approved by the Mayor on May 29, 2023.

From the documents placed before this Court and upon hearing the submissions made on behalf of all the parties it appears that the order impugned was passed in March 2021 but approved by the Mayor on May 29, 2023. The same was communicated to the petitioner in August 2023. There is nothing on record to suggest that the petitioner appeared and contested in the proceeding under Section 400(1).

Though, the learned advocate representing the private respondent submits, upon instruction that, the petitioner was duly represented at the time of hearing, but the order impugned does not reflect so. There may be documents in support of the petitioner's appearance with the Corporation.

As it appears that the order was communicated long after the same was passed and thereafter approved by the Mayor, accordingly, the petitioner ought to be given one opportunity to approach the statutory appellate forum.

Time to prefer the appeal has long expired. Assuming that the petitioner got knowledge of the order after it was communicated in August 2023 even then one month's statutory time limit to prefer appeal has expired. The appeal ought to have been filed within a period of one month.

As the order of demolition is an appealable one, the Court is not inclined to enter into the merit of the same at this stage.

The Court directs that in the event the petitioner approaches the appellate forum by October 17, 2023, the impugned order of demolition and the notice issued under Sections 544 and 546 shall not be acted upon till February 29, 2024.

In the event, the statutory appeal is filed within the time as specified hereinabove, the appellate forum shall take into consideration the prayer of the petitioner seeking stay of the impugned order of demolition by February 29, 2024.

The Registry of the learned Tribunal is directed to accept the appeal to be filed by the petitioner without insisting upon filing the certified copy of the impugned order of demolition. The petitioner is directed to immediately apply for obtaining the certified copy of the order impugned and submit the same before the appellate forum as soon as the same is made available by the department.

The department is directed to supply certified copy of the impugned order of demolition within a period of 48 hours from the date of filing the application subject to payment of necessary charges.

The petitioner is directed to apply for obtaining the certified copy by tomorrow (10.10.2023).

The writ petition stands disposed of.

Learned advocate representing the private respondent seeks leave to file Vakalatnama in the department in course of today.

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

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(Amrita Sinha, J.)