

Form J(1)

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
Appellate Side**

**Present :
The Hon'ble Justice Hiranmay Bhattacharyya**

WPA 24066 of 2019

**Ashok Kumar Singha and Anr.
Vs.
The Kolkata Municipal Corporation and Ors.**

For the petitioner:- Mr. Suman Dey

For the K.M.C.:- Mr. Alok Kumar Ghosh
Mr. Gopal Chandra Das

For the State:- Mr. J. Dutta
Mr. B.Ghosh

Item No. 04

Heard on: 27.03.2023

Judgment on: 27.03.2023

Hiranmay Bhattacharyya, J.

The writ petitioner has prayed for a writ of mandamus to command the respondent Kolkata Municipal Corporation to remove and or demolish the unauthorized construction in terms of the demolition order dated 9th April, 2019 passed by the Special Officer (Building), Kolkata Municipal Corporation.

Mr. Dey, learned advocate appearing for the petitioner submits that this writ petition was filed for implementation of the order of demolition passed by the "SOB", KMC as KMC is not implementing the order of demolition passed by the "SOB".

Mr. Ghosh, learned counsel representing the KMC submits that one Sri Raj Kumar Guha has preferred an appeal under Section 400(3) of the Kolkata Municipal Corporation, 1980 (for short the 1980 Act) challenging the order of demolition passed by the "SOB". He further submits that the Municipal Building Tribunal has fixed a date for hearing of the appeal on 5th April, 2023.

None appears for the private respondents in spite of service.

Heard the learned advocates for the parties and perused the materials placed.

The Executive Engineer (Borough-XIII) being the respondent No.5 to this writ petition has filed an affidavit pursuant to the order dated 17th March, 2023. It has been stated in the said affidavit that no order of stay has been passed by the Municipal Building Tribunal in BTA No. 31 of 2022 filed by Raj Kumar Guha who is one of the persons responsible. Mere pendency of appeal does not also operate as a stay of operation of the order of the S.O.B. Though there is no legal impediment in implementation of the order of S.O.B. by the Municipal authority, however, since a statutory appeal under Section

400(3) of the 1980 Act is pending before the Municipal Building Tribunal, this Court is of the considered view that interest of justice would be sub-served if instead of directing implementation of the order of S.O.B. at this stage, the Municipal Building Tribunal is directed to dispose of the said appeal within a specified period of time.

Accordingly, WPA 24066 of 2019 stands disposed of by requesting the Municipal Building Tribunal, Kolkata to take up hearing of BTA No. 31 of 2022 on the next date of hearing i.e., on 5th April, 2023 and to dispose of the same as expeditiously as possible but positively on or before May 4, 2023 after affording opportunity of hearing to the petitioner and all other interested parties including the appellant before the Tribunal and by passing a speaking order which shall be communicated to the parties immediately thereafter. Since the order of the SOB is under challenge before the learned Tribunal nothing survives in the application for reconsideration of the order of the S.O.B. dated 09.04.2019.

Therefore, there is no necessity on the part of the KMC authority to decide the application for reconsideration of the order by the "SOB" made by the present respondents and such application shall be treated as disposed of being infructuous.

It is, however, made clear that the parties will be entitled to raise all points before the said Tribunal in course of hearing of the appeal before the Tribunal.

There shall be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be given to the learned advocates for the parties on usual undertakings.

(Hiranmay Bhattacharyya, J.)