

OD-5

ORDER SHEET

WPO No.90 of 2023
IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
ORIGINAL SIDE

SANKAR MITRA
VS.
THE KOLKATA MUNICIPAL CORPORATION & ORS.

BEFORE:
The Hon'ble JUSTICE AMRITA SINHA
Date: 3rd February, 2023.

Appearance:
Mr. P. S. Deb Barman, Adv.
Mr. Amit Gupta, Adv.
....for the Petitioner.

Ms. Manisha Nath, Adv.
Ms. Sabnam De Adv.
... for K.M.C.

The Court:- Instruction has been received from the Assistant Engineer [Civil], Building Department, Borough-I, Kolkata Municipal Corporation signed on 02.02.2023 that the department was not aware about the appeal filed before the learned Municipal Building Tribunal.

On inquiry it revealed that no requisition for the case record was received by the department till date from the learned Municipal Building Tribunal. After having come to know the order passed by the learned Municipal Building Tribunal, the department already forwarded the case record to the learned Municipal Building Tribunal on 27.01.2023.

It appears from the copy of the order in connection with the appeal that the appeal is fixed for further consideration on 07.03.2023. The order of demolition was passed in March, 2022.

On account of the delay in requisitioning the case record and consequent delay in receiving the same from the department, the unauthorised construction gets a new lease of life.

The learned Municipal Building Tribunal ought to ensure that requisition for the case records are made immediately on filing of the appeal and further ensure that the department forwards the case records without any unnecessary delay.

In the present case, the Assistant Engineer [Civil], Building Department, Borough-I, Kolkata Municipal Corporation has forwarded instruction that no requisition was made from the learned Municipal Building Tribunal calling for the case records. The same ought not to have been done. The case record ought to have been called for, so that the appeal could be decided without any hindrance.

As the department has already forwarded the case records to the learned Municipal Building Tribunal on 27.01.2023, the Tribunal is directed to consider the appeal and decide the prayer of the petitioner for stay of the order of demolition at the earliest, but positively within 07.03.2023.

The men and agents of the Kolkata Municipal Corporation are directed not to give any effect or further effect to the impugned order of demolition till 16.03.2023 or until further, whichever is earlier.

The learned advocate appearing on behalf of the petitioner is directed to apprise the learned Municipal Building Tribunal about this order within a week from date.

Instruction given by the Assistant Engineer [Civil], Building Department, Borough-I, Kolkata Municipal Corporation signed on 02.02.2023 be retained with the records.

Writ petition stands disposed of.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties upon compliance of all legal formalities.

(AMRITA SINHA, J.)

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