

ORDER SHEET

WPO/216/2023
IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
ORIGINAL SIDE

KANAN BALA NASKAR AND ANR.
VS
THE STATE OF WEST BENGAL AND ORS.

BEFORE:
The Hon'ble JUSTICE AMRITA SINHA
Date: 15th February, 2023.

Appearance:
Mr. Dhyutiman Banerjee, Adv.
...For the Petitioner
Mr. Gopal Chandra Das, Adv.
Mr. Debangshu Mondal, Adv.
...For the KMC
Mrs. Sipra Majumder, Adv.
Ms. Debarati Sen (Bose), Adv.
...For the State

The Court: The certified copy of the order dated 9th February, 2023 passed by the Municipal Building Tribunal, KMC in B.T. Appeal No. 204 of 2022 has been produced before this Court.

It appears therefrom that the Tribunal, despite being made aware of the order dated 3rd February, 2023 passed in WPO 216 of 2023, did not take any decision with regard to the prayer of stay made by the petitioners.

The Kolkata Municipal Corporation has issued notice under Sections 544 and 546 of the KMC Act, 1980 fixing the date of demolition today i.e. 15th February, 2023.

The Tribunal ought to have appreciated that if the structure in question is demolished prior to the hearing of the appeal, then the entire proceeding before the Tribunal will become infructuous.

The Tribunal ought to have considered the prayer of the petitioner for stay of the demolition proceeding pending before the Tribunal.

It appears from the order of the Tribunal dated 9th February, 2023 that the learned advocate for the Kolkata Municipal Corporation was present.

The petition under Section 5 of the Limitation Act is pending consideration. Till the same is disposed of, the appeal cannot be technically said to be ready for consideration.

In view of the above, the Tribunal is requested to consider the application filed by the petitioners under Section 5 of the Limitation Act and the application filed for stay of the impugned order of demolition simultaneously on the basis of the records available before the Tribunal and the documents produced by the representative of the Kolkata Municipal Corporation.

The private respondent shall also be given an opportunity of hearing.

Date has been fixed by the Tribunal on 20th February, 2023 for hearing the petitioners under Section 5 of the Limitation Act. The application for stay shall also be decided by the Tribunal simultaneously. The case records pertaining to the appeal be sent to the Tribunal at the earliest.

The impugned notice under Sections 544 and 546 of the KMC Act, 1980, shall not be given effect to till 31st March, 2023 or until further order whichever is earlier.

The 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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