

ORDER SHEET

WPO/61/2018

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL CIVIL JURISDICTION
ORIGINAL SIDE
(COMMERCIAL DIVISION)

SHYAM KANHAIYA JAISWAL & ANR.
VS.
KOLKATA MUNICIPAL CORPORATION & ANR.

BEFORE:

The Hon'ble JUSTICE SAUGATA BHATTACHARYYA

Date: 20th December, 2023.

Sk. Aptabuddin, Adv.
... for the petitioners.

Mr. N.C. Bihani with
Ms. Manisha Nath, Adv.
... for the KMC.

The writ petition is taken up for consideration. An accommodation has been prayed for on behalf of the petitioners which is refused since similar prayer was made before this Court on 6th December, 2023 on behalf of the petitioners and the same was granted, thereby the matter was fixed today, 20th December, 2023.

Kolkata Municipal Corporation is represented by Mr. Bihani, learned Counsel.

On perusal of the writ petition and having heard the submissions made by the learned Counsel appearing for KMC, it appears that the subject matter of challenge is the order of the Special Officer (Building) dated 27th November, 2017 which is at pages 114 to 118 of the writ

petition. In the said order of the Special Officer (Building) dated 27th November, 2017 by part (A) and part (B), Kolkata Municipal Corporation did not approve the construction made by the petitioner at 41C, Bechu Chatterjee Street, Ward no.38 in deviation of the plan sanctioned. But in the same breath, under part (C), rest of the portions of construction apart from the constructions which have been delineated at part (A) and part (B) were permitted to be retained subject to fulfilling certain conditions which are stated in the last part of the order of Special Officer (Building).

It has been rightly pointed out by the learned Counsel representing KMC that the order dated 27th November, 2017 passed by the Special Officer (Building) is an appealable order under Section 400(3) of the Kolkata Municipal Corporation Act, 1980. However, the limitation which has been prescribed for appeal under Section 400(3) of the said Act is 30 days from the date of the order.

Having considered the provisions of Section 400(3) of the Act, this Court disposes of the writ petition granting leave to the petitioners to prefer an appeal against the order dated 27th November, 2017 passed by the Special Officer (Building) before the Building Tribunal within a fortnight from date. If the appeal is preferred within fortnight, as alluded above, the Tribunal shall decide the appeal on merit and the question of limitation will not be a relevant consideration in view of the fact that the writ petition was filed on 7th February, 2018. The Tribunal shall make an

endeavour to dispose of the appeal, if preferred, within a reasonable time but not later than 16 weeks from the date of preferring the appeal.

However, it is made clear that if no appeal is preferred within the aforesaid time in terms of the leave granted by this Court today, the concerned authority of Kolkata Municipal Corporation shall be at liberty to take steps in accordance with law and in terms of the order of the Special Officer (Building) dated 27th November, 2017.

However, there shall be no order as to costs.

Parties to act on server copy of this order downloaded from the official website of this Court.

(SAUGATA BHATTACHARYYA, J.)