

ORDER SHEET

WPO/384/2023
IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
ORIGINAL SIDE

SUBENDU BASAK
VS
STATE OF WEST BENGAL AND ORS.

BEFORE:

The Hon'ble JUSTICE AMRITA SINHA

Date: 20th February, 2023.

Appearance:
Mr. Somnath Gangopadhyay, Adv.
...For the Petitioner
Mr. Achintya Kr. Banerjee, Adv.
Mr. Debangshu Mondal, Adv.
...For the KMC
Mr. Milan Kumar Maity, Adv.
...For the State

The Court: The matter relates to certain constructions at premises no. 122, Ultadanga Main Road (Bidhan Nagar Road), Ward No. 14, Borough III under jurisdiction of the Kolkata Municipal Corporation.

According to the Corporation, certain portions of the said premises have been constructed in an unauthorised manner.

The Executive Engineer (Civil/Building) by an order dated 4th January, 2023 directed the person responsible to demolish the illegal construction of about 144 sq. mt. of the aforesaid premises failing which the Corporation will demolish the same and recover the cost of demolition from the person responsible.

Being aggrieved by the order of demolition, the petitioner preferred statutory appeal before the Municipal Building Tribunal, Kolkata Municipal Corporation being B. T. Appeal no. 13 of 2023 on 16th January, 2023.

Date was fixed by the Tribunal on 8th February, 2023 for S/R & AD. On 8th February, 2023 learned advocate for the petitioner herein and the learned advocate appearing for the Corporation were present. As the case records from the Corporation were not received by the Tribunal, the matter has been fixed on 3rd April, 2023.

The Executive Engineer (Civil), Building Department, Borough- III issued a notice on 1st February, 2023 under Sections 544 and 546 of the KMC Act, 1980 intimating the petitioner that the men and agents of the Kolkata Municipal Corporation will enter the premises on 21st February, 2023 for demolishing the unauthorised construction in terms of the order passed by the Executive Engineer.

The petitioner submits that if the alleged unauthorised construction is demolished prior to the appeal being decided by the appellate forum, the appeal itself will be rendered infructuous.

It appears from the submissions made on behalf of the petitioner, the Corporation and the documents available on record that the order of demolition was passed on 4th January, 2023. Statutory appeal was preferred by the person responsible within the prescribed period and the same is pending consideration before the appellate forum. The person responsible ought to get an opportunity to test the legality of the demolition order before the learned Tribunal.

The matter is fixed by the Tribunal on 3rd April, 2023.

The concerned authority of the Corporation is directed to transmit all records of the aforesaid demolition case before the Tribunal so that the matter can be taken up for consideration on the date fixed.

The Tribunal is directed to take up the matter and decide the same on urgent basis without granting any unnecessary adjournment to either of the parties.

The Executive Engineer, Building Department is directed not to give any effect or further effect to the impugned notice under Sections 544 and 546 of the KMC Act till 28th April, 2023 or until further order whichever is earlier.

The writ petition stands disposed of.

Affidavit of service filed in Court be also retained with the record.

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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