

ORDER SHEET

WPO/392/2023
IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
ORIGINAL SIDE

HARSHA JITENDRA DESAI
VS
THE KOLKATA MUNICIPAL CORPORATION AND ORS.

BEFORE:
The Hon'ble JUSTICE AMRITA SINHA
Date: 23rd February, 2023.

Appearance:
Mr. Raghunath Chakraborty, Adv.
Ms. Tanushree Das, Adv.
...For the Petitioner
Mr. Gopal Chandra Das, Adv.
Mr. Debangshu Mondal, Adv.
...For the KMC
Mr. Debjit Mukherjee, Adv.
Mr. Susmita Chatterjee, Adv.
...For the State

The Court: This writ petition relates to certain unauthorised construction at 48, Gariahat Road, Ward No. 86, Borough-VIII under jurisdiction of the Kolkata Municipal Corporation. The petitioner is suffering an order of demolition passed by the Special Officer (Building), Kolkata Municipal Corporation on 14th December, 2022.

Being aggrieved by the said order of demolition, the petitioner approached the appellate forum being the Municipal Building Tribunal, Kolkata Municipal Corporation in B.T. Appeal No. 44 of 2023 filed on 20th February, 2023. The appeal has been fixed by the Tribunal on 16th March, 2023.

Petitioner is presently aggrieved by the notice issued under Sections 544 and 546 of the KMC Act, 1980 on 13th February, 2023 intimating that the men and agents of the Kolkata Municipal Corporation shall enter the

subject premises on 21st February, 2023 for demolishing the unauthorised structure that is the brick wall over roof of B+G+5 storied residential building.

Learned advocate for the petitioner submits that in the event the demolition takes place prior to the appeal being decided by the appellate forum, then the appeal itself will be rendered infructuous.

Learned advocate representing the Kolkata Municipal Corporation submits that the Corporation took steps in compliance of the direction passed by the Special Officer (Building) for demolition of the unauthorised structure.

The instant writ petition was taken up for consideration by the Court on 21st February, 2023 but no order could be recorded on the said date as the officers of the Court were observing cease work. The Court passed oral direction upon the Kolkata Municipal Corporation through Mr. Gopal Chandra Das, learned advocate representing the Corporation not to take any further steps in response to the impugned notice dated 13th February, 2023 issued under Sections 544 and 546 of the KMC Act.

Pursuant to the oral direction passed by the Court through Mr. Debjit Mukherjee, learned advocate representing the police authorities, police force was withdrawn from the site of demolition on 21st February, 2023.

As it appears from the submissions made in Court and the documents annexed to the writ petition that the petitioner has already assailed the order of demolition before the appellate forum and the said order is under scrutiny before the Tribunal, accordingly, the petitioner ought to be given an

opportunity to proceed with the appeal to test the validity of the impugned order of demolition.

In view of the above, the Assistant Engineer (Civil), Building Department, Borough-VIII is restrained from giving any effect and/or further effect to the impugned notice dated 13th February, 2023 till 28th April, 2023 or until further order, whichever is earlier.

The petitioner is directed to apprise the Tribunal about the interim protection that has been granted in his favour.

The Tribunal is requested to consider the prayer of the petitioner/appellant before the Tribunal for stay of operation of the order of demolition.

It is made clear that in the event the petitioner is unable to obtain an order of stay of the order of demolition prior to 28th April, 2023, it will be open for the Corporation to implement the order of demolition.

The Assistant Engineer (Civil), Building Department, Borough-VIII is directed to immediately transmit all records of the present case before the Tribunal so that the matter is not delayed for want of records and the same can be decided on the scheduled date.

The writ petition stands disposed of.

Report filed by the Officer-in-Charge, Gariahat Police Station be retained with the records.

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

(AMRITA SINHA, J.)

