

ORDER SHEET
WPO No.598 of 2023
IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
ORIGINAL SIDE

SAMRAT MALLICK
VS
STATE OF WEST BENGAL & ORS.

BEFORE:
The Hon'ble JUSTICE AMRITA SINHA
Date: 20th March, 2023.

Appearance:
Mr. Somnath Gangopadhyay, Adv.
...For the Petitioner.

Mr. S. Nayak, Adv.
Mrs. R. Maitra, Adv.
...For the KMC

Ms. Tuli Sinha, Adv.
..for the State.

The Court: Premises no.40/6/G, Abinesh Chandra Lane, Ward No.34, Borough-III under the jurisdiction of the Kolkata Municipal Corporation is suffering an order of demolition dated 23rd November, 2022 under section 400[1] of the Kolkata Municipal Corporation Act, 1980 passed by the Executive Engineer [Building], Borough-III.

The petitioner being aggrieved by the order of demolition preferred statutory appeal before the Municipal Building Tribunal being BT Appeal no.216 of 2022. The said appeal was filed on 16th December, 2022, that is, within the statutory time limit. Date was fixed on 11th January, 2023.

The matter was taken up for consideration by the Tribunal on 11th January, 2023 and 6th February, 2023. The case record from the Kolkata

Municipal Corporation is yet to be forwarded to the Tribunal. Next date fixed by the Tribunal is 10th May, 2023.

In the meantime, notice under sections 544 and 546 of the Kolkata Municipal Corporation Act, 1980 has been issued on 6th March, 2023 fixing 23rd March, 2023 as the date when the men and agents of the Kolkata Municipal Corporation shall enter the subject premises for carrying out demolition of the unauthorized four storied structure.

Petitioner is aggrieved by the same. It is submitted that as the legality of the order of demolition passed by the Executive Engineer [Civil], Building Department is under scrutiny before the appellate forum, accordingly, the impugned notice ought not to have been issued at this stage.

Learned advocate representing the Kolkata Municipal Corporation submits that the petitioner was not diligent enough to proceed with the appeal pending before the Tribunal.

From the submissions made on behalf of both the parties and upon perusal of the material on record, it appears that the petitioner assailed the order of demolition before the appellate forum within the stipulated period of limitation and the said appeal is pending consideration. The Tribunal ought to decide as to whether the order of demolition was passed in accordance with the provisions of the Act or not.

In the event the structure is demolished prior to the appeal being considered by the appellate forum, the appeal itself will be rendered infructuous.

In view of the above, the men and agents of Kolkata Municipal Corporation are restrained from taking any further steps pursuant to the

impugned notice dated 6th March, 2023 under sections 544 and 546 of the Kolkata Municipal Corporation Act, 1980 till 9th June, 2023 or until further order, whichever is earlier.

It will be open for the petitioner to seek necessary relief in the pending appeal before the Tribunal for stay of operation of the impugned order of demolition. If the petitioner fails to obtain any order of stay of the demolition order passed by the Executive Engineer within the time limit stipulated hereinabove, it will be open for the Corporation to proceed in accordance with law.

The Executive Engineer (Civil), Borough-III, Building Department is directed to immediately transmit the case records of the present case to the Building Tribunal so that the Tribunal may decide the matter on the date fixed without granting any unnecessary adjournment to either of the parties.

The writ petition stands disposed of.

Affidavit of service filed in Court today is taken on 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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