

OD -6

ORDER SHEET
WPO No. 670 of 2023
IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
ORIGINAL SIDE

MD. REYAZ
VS
THE KOLKATA MUNICIPAL CORPORATION & ORS.

BEFORE:
The Hon'ble JUSTICE AMRITA SINHA
Date: 21st March, 2023.

Appearance:
Mr. Raghunath Chakraborty, Adv.
Ms. Sabnam Sultana, Adv.
...For the Petitioner.
Mr. Gurudas Mitra, Adv.
Mr. Dwijadas Chakraborty, Adv.
...For the KMC.
Mr. Debasish Ghosh, Adv.
Mr. Sayan Ganguly, Adv.
..for State.

The Court:- Petitioner is aggrieved by the notice dated 09.03.2023 issued under Sections 544 & 546 of the Kolkata Municipal Corporation Act, 1980 intimating the petitioner that the men and agents of the Kolkata Municipal Corporation shall enter the premises no. 39/2, Gorachand Road, Ward No.60, Borough No.-VI for demolition of the unauthorized structure in terms of the direction passed by the Executive Engineer (Civil)/ Building Department, Borough-VI on 31.01.2023 under Section 400(1) of the Kolkata Municipal Corporation Act, 1980.

The specific case of the petitioner is that no notice of the proceeding under Section 400(1) of the Kolkata Municipal Corporation Act, 1980 was issued upon the petitioner described as person responsible for making construction. The order of demolition dated 31.01.2023 was not communicated to the petitioner. The Impugned notice under Sections 544 & 546 of the Kolkata Municipal Corporation Act, 1980 was also not communicated to the petitioner but was affixed on the outer wall of the subject premises.

The petitioner intends to prefer an appeal against the order of demolition and a draft appeal alleged to be filed before the appropriate forum is annexed to the writ petition. The petitioner submits that for want of certified copy of the order of demolition, the appeal could not be filed.

Learned Advocate representing the Kolkata Municipal Corporation produces a copy of the order of demolition dated 31.01.2023 passed by the Executive Engineer (Civil)/ Building Department, Borough-VI.

There is no proof of service of the said order upon the person responsible. There is, however, seal of the Beniapukur Police Station dated 02.02.2023 evidencing service of the order upon the police.

Learned advocate representing the Kolkata Municipal Corporation is yet to receive instruction whether notice of the demolition proceeding was served upon the petitioner or not.

Learned advocate representing the State respondents submits, upon instruction that, the date of demolition fixed today i.e. on 21.03.2023 has been sought to be deferred for want of police personnel because of the ongoing Higher Secondary Examination.

Instruction dated 20.03.2023 forwarded by the Officer-in-Charge, Beniapukur Police Station be retained with the records.

As it appears that an order has been passed under Section 400(1) of the Act and the petitioner intends to assail the same before the appellate forum but is prevented to do so for want of the certified copy of the order, accordingly, leave is granted to the petitioner to approach the appellate forum with the copy of the order dated 31.01.2023 that has been produced in Court today by the learned advocate representing the Kolkata Municipal Corporation.

Filing section of the Municipal Building Tribunal, Kolkata Municipal Corporation is directed to accept the appeal without insisting upon the certified copy of the order of demolition dated 31.01.2023.

The petitioner shall file the appeal positively by 29th March, 2023. The Municipal Building Tribunal shall decide the matter without pressing upon filing of the certified copy of the impugned order.

The Executive Engineer (Civil)/ Building Department, Borough-VI is directed to supply the certified copy of the order of demolition to the petitioner within one week from the date of communication of this order. The petitioner shall file the certified copy before the appellate forum as soon as the same is delivered by the Corporation. The said officer shall also transmit the file and records of the demolition case before the appellate forum so that the Municipal Building Tribunal may decide the issue without any delay.

All points raised in the present petition and the appeal to be filed by the petitioner is kept open to be decided on merits by the Municipal Building Tribunal.

The petitioner is restrained from making any further construction at the subject premises and is further restrained from transferring/ alienating any portion of the subject structure without obtaining leave from the appellate forum.

Officer-in-Charge, Beniapukur Police Station is directed to keep strict vigil over the property to ensure that no further construction is carried on at the subject premises and the no portion of the property be transferred/ alienated/handed over to any party whatsoever till the matter is finally decided by the Municipal Building Tribunal.

The men and agents of the Kolkata Municipal Corporation are directed not to take any coercive steps in respect of the subject premises till 13.04.2023 or until further order passed by the appellate forum, 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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