

WPO No.752 of 2023
IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
ORIGINAL SIDE

SRI TAPAN KUMAR PATRA & ORS.
-Versus-
THE KOLKATA MUNICIPAL CORPORATION & ORS.

BEFORE:
The Hon'ble JUSTICE AMRITA SINHA
Date:30th March, 2023.

Appearance:
Mr. Sounak Bhattacharya Adv.
Mr. Satyam Mukherjee, Adv.
Mr. Lalratan Mondal, Adv.
Mr. Pranab Kumar Saha, Adv.
...for Petitioners.

Mr. Subhrangshu Panda, Adv.
Ms. Debangana Dey Nayak, Adv.
...for KMC.

The Court:-The order of demolition passed under Section 400(1) of the Kolkata Municipal Corporation Act, 1980 on 15.03.2023 by the Executive Engineer (Civil)/Building, Borough-III in respect of the premises no. 2/16, Sir Gurudas Road, Ward No.30, Borough-III of the Kolkata Municipal Corporation is impugned in the present writ petition.

By the said order the petitioners have been directed to demolish the illegal construction within five days from the date of receipt of the order failing which the Kolkata Municipal Corporation will demolish the said construction and lodge FIR against the petitioners and recover the cost of demolition from them.

The petitioners intend to prefer an appeal against the order of demolition. The petitioners have been granted only five days' time to demolish the alleged unauthorized construction.

According to the provision of Section 400(3) of the Act, thirty days' time is there for preferring an appeal. In the event the structure is demolished prior to the appeal being filed and decided by the appellate forum, then the appellate provision will be rendered nugatory and the petitioners will be left remediless.

In view of the above, it will be open for the petitioners to file appeal before the appellate forum within the time period stipulated in the statute and pray for stay of the impugned order before the said forum.

Department of the building tribunal is directed to register the appeal to be preferred by the petitioners without insisting upon the certified copy of the impugned order of demolition. The Tribunal will take steps to decide the prayer of the petitioners for stay of the impugned order of demolition at the earliest. The petitioners shall apply for the certified copy at once and file the same immediately after the same is made available by the department.

The writ petition stands disposed of.

Affidavit of service filed in Court today is taken on record.

Urgent certified photocopy of this order, if applied for, be supplied to the parties or their advocates on record expeditiously on compliance of usual legal formalities.

(AMRITA SINHA, J.)