

OD-16

ORDER SHEET

WPO No. 823 of 2023

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
ORIGINAL SIDE

SABITA SARKAR AND ANR.
Versus
THE KOLKATA MUNICIPAL CORPORATION AND ORS.

BEFORE:

The Hon'ble JUSTICE AMRITA SINHA

Date : April 10, 2023.

Appearance:

Mr. Bratin Kr. Dey, Adv.
Ms. Anjana Banerjee, Adv.
...for the Petitioners

Mr. Gurudas Mitra, Adv.
Md. Z. Rahman, Adv.
...for KMC

Mr. Partha Pratim Roy, Adv.
Mr. Dyutiman Banerjee, Adv.
...for the Respondent no. 8

The Court : The affidavit-of-service is taken on record.

The petitioner is aggrieved by the notice dated 21st March, 2023 issued under Sections 544 and 546 of the Kolkata Municipal Corporation Act, 1980 intimating the petitioners that the men and agents of the Kolkata Municipal Corporation will enter premises no. 1/H/5, Kalimuddin Sarkar Lane, Ward-34, Borough-III on 11th April, 2023 for demolishing the unauthorised four-storied R.C.C. frame structure as per the order passed by the Special Officer (Building)

on 20th January, 2023 under Section 400(1) of the Kolkata Municipal Corporation Act, 1980.

The petitioners submit that being aggrieved by the order of demolition, the petitioners preferred an appeal before the Municipal Building Tribunal being BT Appeal No. 35 of 2023. The said appeal is pending consideration before the Tribunal. Last date fixed in the said appeal was 3rd April, 2023 which was subsequently declared as holiday by the Government of West Bengal and the next date fixed by the Tribunal is 18th April, 2023.

A prayer has been made for stay of operation of the impugned order of demolition in the pending appeal. Implementation of the notice under Sections 544 and 546 of the Act for demolition of the property at this stage will render the appeal infructuous.

Learned Advocate representing the Kolkata Municipal Corporation submits, upon instruction that, the order of demolition has been passed in compliance of the direction passed by the Court. Departmental inspection revealed that the entire structure was constructed without obtaining any sanctioned plan from the Kolkata Municipal Corporation.

This Court in an order dated 16th March, 2023 passed in CC No. 3 of 2023 with WPO No. 2083 of 2022 in the matter of Md. Ali Azad Vs. Santanu Dutta directed the concerned officer to take strict steps for compliance of the direction passed by the Court and to file an affidavit-of-compliance on 27th April, 2023. The officers of the Corporation are duty bound to comply the order passed by the Court.

It appears from the submissions made on behalf of the parties and upon perusal of the materials placed before this Court that, the impugned notice under Sections 544 and 546 was issued on 23rd March, 2023. The appeal of the petitioner was pending on the date the impugned notice was issued. It was the duty of the petitioners to apprise the Tribunal where the appeal was pending with regard to any subsequent steps taken by the Corporation consequent to the order of demolition. The petitioners waited from 21st March, 2023 till 5th April, 2023 for preferring the instant writ petition, but did not take any steps to approach the forum where the appeal is pending seeking stay of the impugned notice.

The petitioners filed the instant petition inter alia seeking stay of the said notice and to permit them to avail the appellate forum.

The prayers made in the writ petition and the conduct of the petitioners cannot be accepted at all. The petitioners being aware of the fact that the premises is suffering an order of demolition ought to have taken prompt necessary steps for obtaining stay of the order of demolition from the forum where the appeal is pending. Instead of the same, the petitioners have approached this Court on the day, just preceding the date fixed for demolition. It appears that the demolition proceeding is being conducted in accordance with the direction passed by the Court.

In view of the above, no relief can be granted to the petitioners in the instant writ petition. The writ petition fails and is hereby dismissed.

It will, however, be open for the petitioners to approach the appellate forum for relief, if so advised.

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

(AMRITA SINHA, J.)

sg.