

WPO No.877 of 2023
IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
ORIGINAL SIDE

NIKHIL MAL
-Versus-
THE KOLKATA MUNICIPAL CORPORATION & ORS.

BEFORE:

The Hon'ble JUSTICE AMRITA SINHA

Date:18th April, 2023.

Appearance:
Mr. Raghunath Chakraborty, Adv.
Mr. Supratik Shyamal, Adv.
Mrs. Sonali Sengupta, Adv.
...for Petitioner.

Mr. Biswajit Mukherjee, Adv.
Mr. Dwijadas Chakraborty, Adv.
...for KMC.

The Court:-The petitioner is aggrieved by the notice issued under Sections 544 & 546 of the Kolkata Municipal Corporation Act, 1980 dated 08.04.2023 intimating the petitioner that the men and agents of the Kolkata Municipal Corporation will enter into the premises No.10/A, Rupchand Mukherjee Road, Ward No.73, Borough-IX, Kolkata-700025 on 18.04.2023 i.e. today for demolition of the unauthorized construction as per the order dated 03.01.2022 passed by the Special Officer (Building) under Section 400(1) of the Kolkata Municipal Corporation Act, 1980.

The order passed by the Special Officer (Building) under Section 400(1) of the Act was carried in appeal by the petitioner before the learned Municipal Building Tribunal being B. T. Application No.193 of 2022. The said appeal was filed in October, 2022.

It appears from the information provided by the learned Municipal Building Tribunal that for want of case records the Tribunal was unable to

take up the matter and the next date is fixed on 13.06.2023 for receiving the case records.

By the order of demolition, the petitioner was directed to demolish the structure of about 80 sq. ft. at the western side of the open space. The order dated 03.01.2022 by the Special Officer (Building) of the Kolkata Municipal Corporation was approved by the Mayor on 14.07.2022. The petitioner submits that in the event the structure is demolished prior to the appeal being decided by the Tribunal, then the entire appeal will be rendered infructuous and the petitioner will remain remediless.

Learned advocate representing the Kolkata Municipal Corporation is yet to receive instruction in the matter. There is no representation on behalf of the respondent No.6 i.e. the complainant.

The matter is being taken up for consideration on urgent basis as the demolition is scheduled today.

From the documents annexed to the writ petition, it appears that the appeal was filed by the petitioner before the learned Municipal Building Tribunal on 14.10.2022 and the case records are yet to be forwarded by the Corporation to the learned Tribunal.

For want of case records, the matter could not be decided. The prayer of stay of operation of the impugned order of demolition has also not been taken up for consideration by the learned Tribunal.

The men and agents of the Kolkata Municipal Corporation, possibly being unaware of the pendency of the appeal, have issued the notice under Sections 544 & 546 of the Act. The submission of the petitioner that the appeal will be rendered infructuous and the petitioner will remain

remediless if the structure is demolished prior to the appeal being disposed of, appears to be a very genuine grievance of the petitioner.

As the order of demolition is under scrutiny by and before the appellate forum, one opportunity ought to be given to the petitioner to defend his case.

In view of the above, the men and agents of the Kolkata Municipal Corporation are restrained from giving any effect or further effect to the impugned notice issued under Sections 544 & 546 of the said Act till 30.06.2023 or until further order, whichever is earlier.

The concerned Executive Engineer (Civil) is directed to immediately transmit all case records of the subject case to the learned Municipal Building Tribunal so that the matter may be taken up for consideration by the learned Tribunal on the date fixed.

It is expected that the learned Municipal Building Tribunal shall consider the prayer of the petitioner for stay of the impugned order of demolition after perusing the case records on 13.06.2023 when the matter will be taken up for consideration.

Learned advocate representing the Kolkata Municipal Corporation is directed to communicate this order to the concerned officers of the Corporation.

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.)