

OD-6

ORDER SHEET

WPO No.932 of 2023  
IN THE HIGH COURT AT CALCUTTA  
Constitutional Writ Jurisdiction  
ORIGINAL SIDE

AXIS INSURANCE BROKING PRIVATE LIMITED  
-Versus-  
KOLKATA MUNICIPAL CORPORATION & ORS.

BEFORE:  
The Hon'ble JUSTICE AMRITA SINHA  
Date:25<sup>th</sup> April, 2023.

Appearance:  
Mr.Soumya Majumdar, Adv.  
Mr. Suman Dutt, Adv.  
Mr. Sumanta Biswas, Adv.  
Mr. Bikash Shaw, Adv.  
...for the Petitioner.

Mr. Gopal Chandra Das, Adv.  
Mr. Debangsu Mandal, Adv.  
..for the KMC.

Mr. Sanjoy Mullick, respondent no.8  
appears in person.

Mr. Shashwat Nayak, Adv.  
Mr. Debnath Ganguly, Adv.  
Mr. Supriyo Dutta, Adv.  
Ms. Aishwarya P. Ganguly, Adv.  
...for respondent no.9.

Ms. Anjusri Mukherjee, Adv.  
...for State.

The Court:-The notice under Sections 544 and 546 of the Kolkata Municipal Corporation Act, 1980 issued by the Executive Engineer, Building Department, Borough-II dated 19.04.2023 intimating the petitioner that the men and agents of the Kolkata Municipal Corporation will enter the premises no. 80, Bidhan Sarani, Kolkata-700 006 on 25.04.2023 for the purpose of demolition of the unauthorized/dangerous structure, viz. extended portion over the Kolkata Municipal Corporation footpath as per the order of the Director General [Building] dated 17.02.2017 under Section 369 of the Act is impugned herein.

An earlier writ petition was filed by the private respondents seeking implementation of the order of demolition. Order was passed by the learned

single Judge to implement the same. The petitioner herein challenged the order passed by the learned single Judge before the Hon'ble Division Bench and by an order dated 19.12.2022 the Court directed the Director General [Building] or any other officer authorized by him not below the rank of Executive Engineer [Building] to hear out the authorized representatives of the parties and pass further order.

The Court emphasized that the public safety was utmost importance and if the officer of the Corporation comes to the conclusion that the impugned projected portion cannot be allowed to remain, without compromising public safety, the same should be definitely demolished at the earliest. The demolition order was directed to be kept in abeyance till the concerned officer passes a fresh order.

In compliance of the direction passed by the Hon'ble Division Bench the parties were heard and the Executive Engineer [Building] passed an order on 07.01.2023 directing demolition of the construction in question.

Being aggrieved by the said order of demolition, the petitioner has preferred an appeal which is pending consideration before the learned Municipal Building Tribunal, being BT Appeal no.31 of 2023. In the meantime the impugned notice has been issued.

According to the petitioner, the said notice cannot be executed as the order dated 17.02.2007 passed by the Director General [Building] does not have any independent existence at this stage. In view of the order passed by the Hon'ble Division Bench, the order passed by the Director General [Building] in the year 2007 has merged with the order passed by the Executive Engineer [Building] on 07.01.2023. The order which can be executed at present is the order dated 07.01.2023 and not the earlier order dated 17.02.2007.

Learned advocate representing the respondent no.9 submits that the Hon'ble Division Bench did not quash the order of the Director General [Building] passed in the year 2007. The same was merely directed to be kept in abeyance. After the order was passed by the Executive Engineer [Building] in January 2023 in conformity with the order passed by the Director General [Building], the construction is liable to be demolished.

Respondent no.8 appears in person and submits that the unauthorized construction was directed to be demolished way back in the year 2007 and in 2023 also the same could not be implemented. The extended portion is highly dangerous and may cause accident and is a risk to the public safety. Prayer has been made for permitting the Corporation to proceed with the demolition work.

Learned advocate representing the Kolkata Municipal Corporation submits that the order of demolition is liable to be executed as the stay application filed by the petitioner in connection with the pending appeal before the learned Municipal Building Tribunal stood rejected yesterday [24.04.2023].

After hearing the submissions made on behalf of all the parties and upon perusal of the materials on record, it appears that the structure in question was directed to be demolished long back. The Hon'ble Division Bench, with regard to the same structure, directed the respondent authority to give further opportunity of hearing to the parties and pass a fresh order.

The Executive Engineer [Building] heard the parties and an order of demolition was passed on 07.01.2023. The validity of the order dated 07.01.2023 is pending consideration in appeal preferred before the learned Municipal Building Tribunal.

Though the direction passed in the order of the Director General [Building] in the year 2007 and the direction in the order passed by the Executive Engineer in 2023 is the same, that is, both opined for demolition of the structure in question, but the order that can be executed at this stage is the last order passed by the Executive Engineer on 07.01.2023.

In accordance with the principle of merger, the order of demolition passed in the year 2007 merged with the last order of the Executive Engineer passed on 07.01.2023.

The validity of the order dated 07.01.2023 is pending consideration before the learned Municipal Tribunal. The impugned notice mentions about the order dated 17.02.2007 ignoring the fact that the same stood merged with the order of the Executive Engineer [Building] passed in January, 2023. The order dated 17.02.2007 does not have an independent existence as it has already merged with the subsequent order, accordingly, the same cannot be executed at this stage.

The impugned notice dated 19.04.2023 is, accordingly, set aside and quashed.

It will, however, be open for the respondent authority to issue fresh notice for execution of the last order passed by the Executive Engineer [Civil]/ Building Department on 07.01.2023 in accordance with law.

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.)