

OD-6

ORDER SHEET

WPO No.944 of 2023
IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
ORIGINAL SIDE

RAJ NARAYAN TANDON & ORS.
VS.
THE KOLKATA MUNICIPAL CORPORATION & ORS.

BEFORE:
The Hon'ble JUSTICE AMRITA SINHA
Date: 27th April, 2023.

Mr. Anindya Bose, Mr. Amit Gupta, Mr. S. Alam,
Mr. Diptendu Mandal, Advocates for the Petitioners.

Mr. Ranajit Chatterjee, Mr. Subhrangsu Panda, Advocates for KMC.

The Court:- Notice dated 18.04.2023 issued under Sections 544 & 546 of the Kolkata Municipal Corporation Act, 1980 intimating the petitioners that the men and agents of the Kolkata Municipal Corporation will enter the premises No.158K, A.P.C. Road, Kolkata-700004 on 27.04.2023 for demolishing the illegal constructions as per the order of the learned Special Officer (Building), Kolkata Municipal Corporation dated 06.03.2021 under Section 400(1) of the Kolkata Municipal Corporation Act is impugned in the instant writ petition.

It appears that the order dated 06.03.2021 passed by the learned Special Officer (Building), Kolkata Municipal Corporation was carried in appeal before the learned Municipal Building Tribunal being B.T. Appeal No.14 of 2021 and by an order dated 21.09.2021 the said appeal stood disposed of with liberty to both the parties to file appeal if any of the party becomes dissatisfied by the final order passed by the learned Special Officer (Building), Kolkata Municipal Corporation.

It has been submitted that the learned Special Officer (Building), Kolkata Municipal Corporation has not yet concluded the proceeding.

It further appears from records that a writ petition was filed before this Court by the private respondent herein being W.P.A. No.20888 of 2021 praying for demolition of the unauthorized construction. The Court vide order dated 13.03.2023 disposed of the writ petition by directing the concerned officer of the Kolkata Municipal Corporation to take steps to deal with the unauthorized construction in accordance with law.

From the submissions made on behalf of both the parties and upon perusal of the materials on records, it appears that the demolition proceeding is still underway and final order is yet to be passed. The order dated 06.03.2021 does not have an independent existence at this stage after the order was passed by the learned Municipal Building Tribunal on 21.09.2021.

The Executive Engineer (Building), Borough-II, Kolkata Municipal Corporation cannot take steps to implement the direction passed in the order dated 06.03.2021 at this stage without acting in accordance with direction passed by the learned Municipal Building Tribunal in B.T. Appeal No.14 of 2021.

In view of the above, the instant notice is liable to be set aside and is, accordingly, set aside and quashed. The concerned officer of the Kolkata Municipal Corporation is directed to take steps to conclude the demolition proceeding in accordance with law after giving reasonable opportunity of

hearing to all the necessary parties at the earliest, but positively within a period of twelve weeks from the date of communication of this order.

Writ petition stands disposed of.

Leave granted to the learned advocate for the petitioners to file supplementary affidavit in course of the day.

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 expeditiously on compliance of usual legal formalities.

(AMRITA SINHA, J.)

nm