

OD - 9

ORDER SHEET

WPO/955/2023

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
ORIGINAL SIDE

ABHISHEK NAG
VS.
STATE OF WEST BENGAL AND ORS.

BEFORE:
The Hon'ble JUSTICE AMRITA SINHA
Date: April 28, 2023.

Appearance:
Mr. Somnath Gangopadhyay, Adv.
... for the petitioner

Mr. Milan Kumar Maity, Adv.
... for the State

Mr. N.C. Bihani, Adv.
Ms. Dipanwita Ganguly, Adv.
... for the KMC.

The Court: Affidavit-of-service filed in Court is taken on record.

Premises no.13/1/1, Beniatola Lane, Ward No.40, Borough-V is facing an order of demolition passed by the Executive Engineer (Building), Borough-IV and V on 27th February, 2023 under Section 400 (1) of the KMC Act, 1980.

Being aggrieved by the order of demolition, the petitioner has preferred statutory appeal before the Appellate forum i.e. the Municipal Building Tribunal, Kolkata Municipal Corporation. The said appeal was

filed within the prescribed period of limitation and the Tribunal has fixed the matter on 23rd June, 2023.

The Executive Engineer (Building) issued a notice under Sections 544 and 546 of the Act on 19th April, 2023 intimating the petitioner that the men and agents of the Kolkata Municipal Corporation will enter the subject premises on 2nd May, 2023 for carrying out the demolition of the unauthorized construction in terms of the order passed by the Executive Engineer on 27th February, 2023.

The petitioner submits that as the validity of the order passed by the Executive Engineer is pending scrutiny before the Appellate forum, the authority ought not to execute the order of demolition at this stage. It has been submitted that the authority ought to wait for the result of the appeal prior to execution of the order of demolition.

It appears from the documents annexed to the writ petition and upon hearing the submissions made on behalf of both the parties that the impugned notice under Sections 544 and 546 of the KMC Act has been issued for implementing the order of demolition. The said order of demolition is under scrutiny before the appellate forum. In the event the order of demolition is executed, then the appeal itself will be rendered infructuous and the petitioner will be left remediless.

To allow one opportunity to the petitioner to place the appeal before the appellate forum, the Executive Engineer ought not to proceed with the demolition order for the timebeing.

Accordingly, the Executive Engineer (Building), Borough-IV and V is restrained from giving any effect and/or further effect to the impugned notice dated 19th April, 2023 under Sections 544 and 546 till 31st July, 2023 or until further order, whichever is earlier.

The petitioner is granted liberty to approach the appellate forum seeking stay of the order of demolition which is under challenge before the Tribunal. In the event, the petitioner is unable to obtain stay order within the time limit prescribed hereinabove, then it will be open for the authority to take steps in the matter in accordance with law.

The Executive Engineer is directed to immediately transmit the case records to the Tribunal so that the matter can be decided without any delay.

WPO/955/2023 stands disposed of.

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.)

RS