

OD-2

ORDER SHEET

WPO No.1236 of 2023
IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
ORIGINAL SIDE

NATARAJ DAS @ NUTU DAS
VERSUS
THE KOLKATA MUNICIPAL CORPORATION & ORS.

BEFORE:
The Hon'ble JUSTICE AMRITA SINHA
Date:16th June, 2023.

Appearance:
Mr. P. S. Deb Barman, Adv.
Mr. Amit Gupta, Adv.
Mr. Shaharayar Alam, Adv.
....for the Petitioner.

Mr. Swapan Kumar Debnath, Adv.
Ms. Sabnam De, Adv.
...for KMC.

Mr. Sounak Bhattacharyya, Adv.
Mr. Pran Gopal Das, Adv.
Mr. Shuvojeet Gupta, Adv.
Mr. Abhirup Halder, Adv.
...for Respondent No.7.

The Court:- Premises No. B/21C/H/13, Dum Dum Road, Ward No.4, Borough-I is facing an order of demolition.

Being aggrieved by the said order of demolition, the petitioner preferred an appeal before the statutory appellate forum being Municipal Building Tribunal in B. T. Appeal No. 198 of 2022.

It has submitted that the said appeal along with an application for stay was filed way back in March, 2022. Till date, no order has been passed in the application for stay. Next date fixed by the learned Municipal Building Tribunal is on 22nd August, 2023.

In the meantime, the Executive Engineer (Civil)/ Building Department, Kolkata Municipal Corporation of the concerned Borough issued notice under Sections 544 & 546 of the Kolkata Municipal Corporation Act, 1980 intimating the petitioner that the men and agents of the Kolkata Municipal Corporation will

enter the subject premises for giving effect to the order of the demolition on 2nd June, 2023. It has been submitted that though the date was fixed for demolition but the demolition did not take place on the scheduled date.

Petitioner submits that in the event the subject premises is demolished prior to the appeal being decided by the appellate forum, then the appeal itself will be rendered infructuous and the petitioner will be left remediless.

Learned advocate representing the private respondent/complainant submits, upon instruction that, the petitioner did not take any steps to move the application for stay before the learned Municipal Building Tribunal and the same has deliberately been kept pending for more than a year. It has only after notice under Sections 544 & 546 of the Kolkata Municipal Corporation Act, 1980 was issued that the petitioner approached this Hon'ble High Court for relief.

On a perusal of the documents annexed to the writ petition and upon hearing the submissions made on behalf of the parties, it appears that admittedly the order of demolition was passed quite some time back and the petitioner preferred an appeal against the impugned order of demolition. The appellate forum where the appeal is pending ought to have decided the stay application otherwise the Kolkata Municipal Corporation will not be in a position to implement the order of demolition.

On account of pendency of the appeal, the persons responsible for making unauthorized construction are holding on to the structure which has been held to be unauthorized.

As the appeal is reported to be fixed on 22nd August, 2023, accordingly, the men and agents of the Kolkata Municipal Corporation are restrained from

giving any effect or further effect to the order of demolition till 30th September, 2023.

Learned Municipal Building Tribunal is requested to take a decision on the stay petition filed by the appellant on the scheduled date and positively within the time limit specified hereinabove without granting any unnecessary adjournment to any of the parties.

The Executive Engineer (Civil)/ Building Department of the Kolkata Municipal Corporation of the concerned Borough is directed to immediately transmit the case records of the instant case before the learned Municipal Building Tribunal so that the matter can be disposed of relying on the documents available before it.

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 expeditiously on compliance of usual legal formalities.

(AMRITA SINHA, J.)