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ORDER SHEET
WPO No.1251 of 2023
IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
ORIGINAL SIDE

MD. MUSAIB
VERSUS
THE KOLKATA MUNICIPAL CORPORATION & ORS.

BEFORE:
The Hon'ble JUSTICE AMRITA SINHA
Date:13th June, 2023.

Appearance:
Mr. Sounak Bhattacharya, Adv.
Mr. S. Chakraborty, Adv.
Mr. Abhirup Halder, Adv.
....for the Petitioner.

Mr. Subhrangsu Panda, Adv.
Ms. Ina Bhattacheryya, Adv.
... for K.M. C.

Mr. Santanu Chatterjee, Adv.
...for Respondent Nos.7 & 8.

The Court:-Alleged unauthorized construction at premises No.B/45/1/H/4, Mansatala Lane, P.S.-Watgunge, Ward No.77, Borough-IX, Kolkata-700023 is due to be demolished today, i.e., 13.06.2023 at the instance of the Kolkata Municipal Corporation.

According to the petitioner, he is a bharatia under the thika tenant of the subject premises. The recorded thika tenant, one Mr. Golab Chand Agarwala is reported to be dead. Petitioner has annexed the death certificate of the said Mr. Golab Chand Agarwala at page 35 of the writ petition. The said certificate was issued by the Sub-Registrar, Nimtala Burning Ghat where the date of the death is recorded as 24.10.2020.

Specific contention of the petitioner is that no opportunity of hearing was given to the petitioner and no notice of demolition was served upon the petitioner prior to initiating the demolition proceeding.

It has been submitted that part demolition took place on 22.02.2023 pursuant to a notice issued under Sections 544 and 546 of the Kolkata Municipal Corporation Act, 1980. Demolition which is scheduled today, i.e., 13.06.2023 is not preceded with any notice.

Learned advocate representing the Kolkata Municipal Corporation submits, upon instruction that, neither notice of demolition nor opportunity of hearing was not granted to the petitioner. Notice was served only upon the police station.

Learned advocate representing Watgunge Police Station has obtained instruction from the Officer-in-Charge, that pursuant to request made by the Kolkata Municipal Corporation, necessary police assistance will be provided to the Corporation on 13.06.2023.

It appears from the submissions made on behalf of the parties that there has been violation of the principles of natural justice in not affording an opportunity of hearing to the occupiers of the subject premises. In the absence of the recorded thika tenants, the bharatias, who are presently occupying the said structure, ought to have been put on notice prior to executing the order of demolition.

In view of the above, the men and agents of Kolkata Municipal Corporation are restrained from acting any further with demolition of the said structure.

The authority is directed to afford an opportunity of hearing to the occupiers of the structure, which has been alleged to be constructed illegally. Necessary order may be passed at the earliest.

Writ petition stands disposed.

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.)

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