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ORDER SHEET
WPO No.1370 of 2023
IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
ORIGINAL SIDE

SK. AHSAN @ SK. EHSAN
-Versus-

THE KOLKATA MUNICIPAL CORPORATION & ORS.

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

Appearance:

Mr. P.S. Deb Barman, Adv.
Mr. Amit Gupta, Adv.
...for Petitioner.

Mr. Gopal Chandra Das, Adv.
Ms. Piyali Sengupta, Adv.
...for KMC.

Mr. Debangshu Dinda, Adv.
...for State.

The Court:- Premises no.7/H/2, Kasai Bustee 1st Lane, Ward-29, Borough-III of the Kolkata Municipal Corporation is facing an order of demolition. Challenging the order of demolition the person aggrieved preferred an appeal before the statutory appellate forum being B. T. Appeal No. 87 of 2022. The appellant before the Tribunal, however, for the reasons best known did not proceed with the appeal in the right earnest and the appeal stood dismissed for default on 30.01.2023.

After dismissal of the appeal the Corporation proceeded to implement the order of demolition and issued notice under Sections 544 & 546 of the Kolkata Municipal Corporation Act, 1980 fixing the date of demolition on 30.06.2023. As necessary police personnel were not available on the scheduled date of demolition, the demolition programme could not be implemented. Further date of demolition is fixed today, that is, 13.07.2023.

Learned advocate representing the police submits, upon instruction that, necessary assistance will be provided to the men and agents of the Corporation at the time of implementing the order of demolition.

Learned advocate representing the petitioner submits that steps are being taken for recalling the order of dismissal and the application for restoration is scheduled to be taken up for consideration by the Tribunal on 31.07.2023.

The petitioner prays for breathing time so that the appeal may be proceeded with before the appellate forum and in support of such submission the petitioner relies upon an order dated 07.07.2023 passed by this Court in the matter of Sahin Sultana Vs. The Kolkata Municipal Corporation & Ors. (WPO No.1339 of 2023). In the said matter the Court granted time to the writ petitioner to proceed with the application for recalling.

In the facts and circumstances of the present case, I am not inclined to exercise jurisdiction because of the reason that the Hon'ble Division Bench of this Court in an appeal being IA No. GA/1/2022 in APOT/119/2022 (Md. Ehtesham Uddin Vs. The Kolkata Municipal Corporation & Ors.) passed order on 19.07.2022 directing the Municipal Building Tribunal to dispose of the B. T. Appeal No.87/2022 as expeditiously as possible, without granting unnecessary adjournment and definitely within three months from the date of communication of this order to the Tribunal.

The time period within which the appeal was directed to be disposed of is long over. The appellant ought to have been cautious and careful in proceeding with the statutory appeal. The appellant instead of proceeding with the appeal left the matter uncared for and the same stood dismissed for default on 30.01.2023.

Till today, no order has been passed in the application seeking recalling the order of dismissal. As on date, there is no order which stands in the way of the Corporation to proceed to execute the order of demolition.

On an earlier occasion, on 30.06.2023, the demolition programme could not be implemented for want of adequate security from the police. Today the police is ready to provide the necessary security to the Corporation for implementing the demolition order.

At this stage, it will be highly improper to pass any order restraining the Corporation from implementing the order of demolition which was passed way back on 19.04.2022.

In view of the above, no relief can be granted to the petitioner in the instant writ petition. The writ petition fails and is hereby dismissed.

The Corporation shall proceed to execute the order of demolition.

Report dated 07.07.2023 filed by the Corporation and the Officer-in-Charge, Narkeldanga Police Station dated 10.07.2023 are taken on record.

Affidavit of service filed in Court today is taken on record.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties upon compliance of all legal formalities.

(AMRITA SINHA, J.)

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