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ORDER SHEET
WPO No.1403 of 2023
IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
ORIGINAL SIDE

SYED GHOLAM JILANI

-Versus-

STATE OF WEST BENGAL & ORS.

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

Appearance:

Mr. Somnath Gangopadhyay, Adv.
...for Petitioner.

Mr. Gurudas Mitra, Adv.
Mr. Atish Kr. Biswas, Adv.
...for KMC.

Mr. Wasim Ahmed, Adv.
Md. Shehabuddin, Adv.
...for State.

The Court:-The matter relates to the premises no. B/3D/H/6, Bengali Shah Warsi Lane, Ward-77, Borough-IX under jurisdiction of the Kolkata Municipal Corporation.

Upon detection of unauthorized construction at the subject premises the Kolkata Municipal Corporation initiated proceedings under Section 400(1) of the Kolkata Municipal Corporation Act, 1980 and an order of demolition was passed on 09.03.2023. One of the aggrieved parties preferred an appeal against the order of demolition before the statutory appellate forum and the said appeal is pending consideration till date.

During pendency of the appeal, the Assistant Engineer (Civil)/ Building /Borough-IX issued a notice on 07.03.2023 under Sections 544 & 546 of the Act intimating the persons responsible, owner/owners and/or occupiers of the subject premises that the workmen of the Corporation will enter the subject premises today, i.e., 13.07.2023 for demolition of the unauthorized structure in accordance with the direction passed by the Executive Engineer on 09.03.2023.

On receipt on the impugned notice under Sections 544 & 546 of the Act, one of the persons responsible for making construction has filed the present petition and submits that the appeal in question will become infructuous in the event the order of demolition is implemented.

Prayer has been made to rescind/cancel the impugned notice dated 07.03.2023 till the disposal of the B. T. Appeal No.108 of 2023.

The aforesaid submission of the petitioner is opposed by the learned advocate representing the Corporation. It has been submitted that an appeal was filed by a different person, who is not the petitioner in the instant writ petition. No appeal has been filed at the instance of the writ petitioner herein. It has further been submitted that there is massive unauthorized construction liable to be demolished.

Upon hearing the parties, it appears that the impugned notice under Sections 544 & 546 has been issued for implementation of the order of demolition dated 09.03.2023. The order under Section 400(1) of the Kolkata Municipal Corporation Act, 1980 is an appealable one. The appeal is pending consideration before the appellate forum.

The said order of demolition is under judicial scrutiny before the statutory appellate forum. At this stage, it may not be proper to implement the said order of demolition till the appeal is decided by the statutory forum. It may be that the writ petitioner is not the appellant before the statutory forum, but the fact remains that the order of demolition is under scrutiny.

In view of the above, the Assistant Engineer (Civil)/Building /Borough-IX is directed not to give any effect or further effect to the impugned notice dated 07.07.2023 till 30.11.2023 or until further order whichever is earlier.

It has been submitted by the learned advocate for the petitioner that the appeal is fixed before the learned Tribunal on 27.07.2023 for service return. The Tribunal is requested to decide the stay application filed in the pending appeal at the earliest.

It is made clear that in the event the order of demolition dated 09.03.2023 is not set aside/modified or stayed by the appellate forum within 30.11.2023, then it will be open for the competent authority of the Corporation to proceed with the demolition of the subject structure. Concerned officer is directed to immediately transmit the records of the case to the learned Building Tribunal so that the appeal may be decided without any further delay.

The petitioner is restrained from making any further construction at the subject premises and is further restrained from transferring/alienating any portion of the said structure without obtaining leave from the appellate forum.

The Officer-in-Charge, Ekbalpore P.S. is directed to keep strict vigil over the property to ensure that no further construction is carried on at the subject premises and no portion of the property is transferred/alienated or handed over to any third party till the matter is decided by the Municipal Building Tribunal.

The writ petition stands disposed of.

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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