

OD-3

ORDER SHEET  
WPO No.1432 of 2023  
IN THE HIGH COURT AT CALCUTTA  
Constitutional Writ Jurisdiction  
ORIGINAL SIDE

AKBAR HOSSAIN & ORS.  
VERSUS  
THE KOLKATA MUNICIPAL CORPORATION & ORS.

BEFORE:  
The Hon'ble JUSTICE AMRITA SINHA  
Date:24<sup>th</sup> July, 2023.

Appearance:  
Mr. Arijit Basu, Adv.  
Mr. Pran Gopal Das, Adv.  
Mr. Shuvojeet Gupta, Adv.  
..for Petitioners.

Mr. Arijit Dey, Adv.  
Mr. Jayanta Kr. Dhar, Adv.  
...for KMC.

Mr. Paritosh Sinha, Adv.  
Ms. Noelle Banerjee, Adv.  
...for State.

The Court:- The matter relates to the premises no.7/H/2, Narkeldanga Main Road, Ward No.29, Borough - III under the jurisdiction of the Kolkata Municipal Corporation.

The subject premises is suffering an order of demolition dated 10.03.2022 passed by the Executive Engineer (Building), Borough – III under Section 400(1) of the Kolkata Municipal Corporation Act, 1980.

Being aggrieved by the said order the persons responsible, that is the petitioners herein, preferred an appeal before the statutory appellate forum being the Municipal Building Tribunal, Kolkata Municipal Corporation on 21.03.2022 being BT Appeal No. 39 of 2022.

It has been submitted by the learned advocate representing the petitioners that on account of non arrival of the records from the office of the concerned engineer, KMC, the appeal cannot proceed. The appeal is pending consideration till date.

During pendency of the appeal notice under Sections 544 and 546 of the Kolkata Municipal Corporation Act, 1980 had been issued on 07.07.2023 intimating that the assistants and workmen of the Kolkata Municipal Corporation will visit the subject premises on 26.07.2023 for demolishing the unauthorized structure in accordance with the direction passed by the Executive Engineer (Building) under Section 400 (1) of the Act.

The petitioners contend that in the event the subject structure is demolished prior to the appeal being decided by the learned Tribunal, the appeal itself will be rendered infructuous and the petitioners will be left remediless.

Learned advocate representing the Corporation submits that as the appeal in question is pending consideration before the statutory appellate forum, accordingly, the petitioners ought to have approached the forum for relief. The instant writ petition ought not to have been filed.

Submission of the learned advocate for the Corporation though is accepted by the Court, but in view of the fact that the appeal has been kept pending for more than one year without passing any order of stay and in the meantime notice of demolition has been issued, accordingly, for ends of justice this Court exercises jurisdiction and restrains the Executive Engineer of the concerned Borough to proceed any further with the demolition work till 30.11.2023 or until further order, whichever is earlier.

The Tribunal is directed to decide the application for stay, if any, at the earliest. The Executive Engineer of Borough-III is directed to immediately transmit the records of the instant case to the Tribunal so that the application and the appeal can be decided at the earliest without any unnecessary delay.

In the event the petitioners fail to obtain stay of the order of demolition by the time stipulated hereinabove, then it will be open for the Corporation to proceed with demolition of the unauthorised structure.

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.)

nm