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IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction

ORIGINAL SIDE

WPO/1543/2023

VEDANT DEALTRADE & ANR.

-Versus-

KOLKATA MUNICIPAL CORPORATION
AND ORS.

BEFORE :
THE HON'BLE JUSTICE JAY SENGUPTA
Date : 25th August, 2023

Appearance :
Mr. Raghunath Chakraborty, Adv.
Mr. Nilesch Mittal, Adv.
Mr. Prasanna Halder, Adv.
...for the petitioner.

Ms. Sima Chakraborty, Adv.
..for the KMC.

The Court : This is an application under Article 226 of the Constitution of India challenging the order dated 21st August, 2023 passed by the Executive Engineer directing the petitioner to demolish the construction within five days from the date of receipt of the order, failing which the Kolkata Municipal Corporation shall demolish the construction and for a direction upon the respondent authorities for regularisation of minor work done by the petitioner.

Affidavit of service filed on behalf of the petitioner is taken on record.

Learned counsel appearing on behalf of the petitioner submits as follows. The petitioner is the owner of the

property in question. During the proceeding the petitioner was not properly heard. Only on one occasion the petitioner's representative was present. Thereafter, the petitioner's prayer for adjournment was not allowed. The order of demolition is not a speaking one. It is patently erroneous inasmuch as the petitioner was directed to demolish the construction within five days while the statutory period for preferring the appeal against such order is thirty days as per Section 400(3) of the Kolkata Municipal Corporation Act. The only infraction alleged was that the courtyard of the building was covered to avoid rain and heat.

Learned counsel appearing on behalf of the Kolkata Municipal Corporation submits as follows. The allegations made in the writ petition are denied. The petitioner was represented at least on one occasion. Thereafter, if the petitioner chooses to absent himself, the authority cannot be faulted for the same. The said courtyard was covered on all the four floors thereby illegal construction continued upto five stories. The impugned order is sufficiently reasoned. The provision for appeal is there in the statute.

I have heard the learned counsels for the parties and perused the writ petition.

It appears that the impugned order was passed directing the petitioner to demolish the illegal structure within five days from the date of receipt of the order, failing which the Kolkata Municipal Corporation shall demolish

the construction. However, it has not been stated that the KMC would do so before passage of thirty days.

Be that as it may, even fixing such period for five days for self-demolition is not proper when the statutory period of appeal is thirty days.

The impugned order otherwise seems to be sufficiently reasoned.

It was for the petitioner to take sufficient care to be represented during the proceeding. It is apparent that he had notice and was represented at the proceeding at least only on one day.

Since there is no violation of principles of natural justice as such and there is valid forum to deal with the matter, this Court is not going to entertain the writ petition on merits.

However, since the demolition was directed to be within five days, which is far less than the statutory period for appeal so far as the direction to demolish the structure within five days of receipt of the order is concerned, the impugned order is stayed till hearing of the appeal, if it is preferred by the petitioner within time.

The petitioner shall be at liberty to prefer the appeal under Section 400(3) of the Kolkata Municipal Corporation Act which shall be decided in accordance with law. All questions of fact and law are kept open and the appellate

authority shall not be swayed by any observations made by this Court while deciding the writ petition.

With the above observations, the writ petition is disposed of.

Urgent photostat certified copies of this order may be delivered to the learned Advocates for the parties, if applied for, upon compliance of all formalities.

(JAY SENGUPTA, J.)

S.Das/