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ORDER SHEET
WPO No.1579 of 2023
IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
ORIGINAL SIDE

SOMNATH GOSWAMI
VERSUS
THE KOLKATA MUNICIPAL CORPORATION & ORS.

BEFORE:
The Hon'ble JUSTICE AMRITA SINHA
Date: 6th September, 2023.

Appearance:
Mr. Sumitava Chakraborty, Adv.
Ms. Ina Bhattacharjee, Adv.
... for the Petitioner.

Mr. Barin Banerjee, Adv.
Mr. Gopal Chandra Das, Adv.
... for K.M.C.

The Court:-The petitioner is aggrieved by the order of demolition dated 25th August, 2023 passed by the Executive Engineer (Civil)/ Building/Borough-III under Section 400(1) of the Kolkata Municipal Corporation Act, 1980 in respect of premises no.12/4, Mahesh Barick Lane.

Direction has been passed to demolish the structure within five days from the date of receipt of the order.

The petitioner submits that the petitioner intends to prefer a statutory appeal before the appellate authority. According to the provision of the Kolkata Municipal Corporation Act, 1980, a person aggrieved by the order passed under Section 400(1) of the Act may prefer statutory appeal within a period of 30 days.

It has been submitted that only five days time has been allowed to demolish the said structure. The same is infringing the right of the petitioner to prefer an appeal before the appellate authority.

The Court is of the opinion that as there is a statutory forum and a time period is mentioned in the Act itself within which an appeal may be preferred before the appellate authority, the Executive Engineer, who passed the order of demolition, ought to have directed implementation of the order of demolition immediately after the time period to prefer the appeal expires. Directing the

person responsible to demolish the unauthorized construction within five days, without maintaining the statutory time period for preferring appeal, is certainly bad in law and liable to be set aside.

In view of the above, direction passed by the Executive Engineer (Civil)/ Building/Borough-III directing demolition of the illegal construction of one 168 sq. meter at the subject premises within five days is directed to be kept in abeyance till 30th September, 2023.

It will be open for the petitioner to approach the appropriate appellate forum, in accordance with law, seeking appropriate remedy.

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.)