

OD-7

ORDER SHEET
WPO No.1636 of 2023
IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
ORIGINAL SIDE

RAJKUMARI SHAW
VERSUS
STATE OF WEST BENGAL & ORS.

BEFORE:
The Hon'ble JUSTICE AMRITA SINHA
Date:29th September, 2023.

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

Mr. Alak Kumar Ghosh, Adv.
Mr. Swapan Kr. Debnath, Adv.
...for KMC.

Mr. Ovik Sengupta, Adv.
..for State Respondent.

The Court:-The matter relates to the unauthorized construction at premises no. 3/1/1D, Ramkrishna Lane, Kolkata-700003, Ward No.7, Borough-I.

The subject structure is suffering an order of demolition passed by the Special Officer (Building) on 30th July, 2019 under Section 400(1) of the Kolkata Municipal Corporation Act, 1980.

Learned advocate representing the petitioner submits that the entire proceeding was conducted ex parte. No notice or opportunity of hearing was given to the petitioner. The order of demolition dated 30th July, 2019 was communicated to the petitioner only in the month of July, 2023.

Immediately after getting notice of the aforesaid order of demolition, an appeal was preferred before the statutory appellate forum and the same is pending consideration.

During pendency of the present writ petition, a notice under Sections 544 & 546 of the Kolkata Municipal Corporation Act, 1980 has been issued intimating that the men and agents of the Corporation will enter the subject premises today, i.e. 29.09.2023 for implementing the order of demolition dated 13th July, 2019.

The petitioner prays for stay of implementation of the order of demolition.

Learned advocate representing the Kolkata Municipal Corporation submits, upon instruction that, notices were served upon the person responsible for making construction but there is no proof of service of the said notices.

Though postal receipts showing posting the notices to the person responsible are available, but the track reports showing actual delivery of the notices upon the person responsible, are not readily available.

Upon hearing submissions made on behalf of both the parties, as it appears that the order of demolition is presently under scrutiny before the statutory appellate forum, accordingly, the Corporation ought not to proceed with the impugned order of demolition for the time being. If demolition is conducted prior to the appeal being heard by the appellate forum, the appeal will be rendered infructuous and the petitioner will remain remediless.

In view of the above, the Corporation is restrained from not giving any effect or further effect to the impugned order of demolition dated 13.07.2019 till 31.01.2024 or until further order, whichever is earlier.

In the event the petitioner fails to obtain order staying implementation of the order of demolition prior to 31.01.2024, then it will be open for the Corporation to proceed with the order of demolition in accordance with law.

Learned Tribunal is requested to consider and dispose of the application seeking condonation of delay in preferring the appeal and the application seeking stay of implementation of the impugned order of demolition within the time limit as specified hereinabove.

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