

WPO No.1894 of 2023
IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
ORIGINAL SIDE

SK. AZAM
VS.
KOLKATA MUNICIPAL CORPORATION & ORS.

BEFORE:
The Hon'ble JUSTICE AMRITA SINHA
Date: 22nd December, 2023.

Appearance:
Mr. Raghunath Chakraborty, Adv.
Mr. Avirup Mondal, Adv.
Ms. Shahnaz Parveen, Adv.
Mr. Mriganka Patra, Adv.
... for Petitioner.

Mr. Nilanjan Chatterjee, Adv.
Mr. Subhrangsu Panda, Adv.
...for KMC.

The Court:- The matter relates to unauthorized construction at 9/1, Baman Para Lane, Ward No.65, Borough-VII under the jurisdiction of the Kolkata Municipal Corporation.

An order of demolition has been passed by the Special Officer [Building], Kolkata Municipal Corporation on 11.01.2023 directing the person responsible to demolish the 3rd and 4th floors entirely. Apart from the additional floors i.e. 3rd and 4th which were constructed without a sanction there are several infringement of the Building Rules, 2009.

Being aggrieved by the order passed in the proceeding under Section 400(1) of the Kolkata Municipal Corporation Act, 1980, the petitioner herein approached the statutory appellate forum by filing B. T. Appeal No.38 of 2023. The next date for consideration of the appeal is 10.02.2024. There is no order staying operation of the order of demolition by the Tribunal till date.

Submission made on behalf of the petitioner is that if the disputed structure is demolished at present, then the appeal itself will be rendered infructuous.

It is evident that admittedly, 3rd and 4th floors do not have any sanction from the Corporation. The petitioner could not have constructed additional floors without obtaining prior sanction from the Corporation.

Engineers of the Corporation have forwarded instruction to the learned advocate wherefrom it appears that the date of demolition was fixed on 12.12.2023 for which notice under Sections 544 & 546 of the Kolkata Municipal Corporation Act, 1980 was issued. Implementation of the demolition order got delayed due to pendency of the observation regarding the nature of land from the Thika Controller. The issue of thika right was challenged before West Bengal Land Reforms and Tenancy Tribunal and the same is pending. The Tribunal was pleased to direct the parties to maintain status quo. In view of the order passed by the Tenancy Tribunal, the demolition programme scheduled on 12.12.2023 has been postponed.

As it appears that the reason for postponing the demolition programme is the pendency of the matter before the Tenancy Tribunal, accordingly, there is no requirement of passing any further order at this stage. There is no immediately urgency or cause of action to exercise jurisdiction in this matter. It will be open for the petitioner to approach the appropriate forum for relief, if occasion so arises.

Writ petition stands disposed of.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties upon compliance of all legal formalities.

(AMRITA SINHA, J.)