

January 09, 2024
ARDR (1) (S/L)

C.O. 86 of 2024

Shahnawaz Nasim @ Md. Shahawaz Nasim
Vs.
The Kolkata Municipal Corporation & ors.

Adv. Prosenjit Mukherjee,
Adv. Md. Shabir,
Adv. Jahangir Hossain,
Adv. Saptarshi Chakraborty,
...for the petitioner.
Adv. Achintya Kumar Banerjee,
Adv. Dwijadas Chakraborty,
...for the KMC.

Heard learned counsels for the parties.

The petitioner is aggrieved by the order of demolition passed by the Executive Engineer (Civil/Building), Borough – III on 22nd March, 2023 under Section 400 (1) of the Kolkata Municipal Corporation Act, 1980.

The petitioner filed a writ petition earlier being WPA 21129 of 2023 assailing the notices issued by the authority under Sections 544 and 546 of the Act of 1980 and by an order passed on 27th September, 2023, a coordinate Bench of this Court granted liberty to the petitioner to approach the appellate forum in accordance with law, if so advised and restrained the Executive Engineer (Civil/Building), Borough-III from giving any effect or further effect to the order of demolition till November, 30,2023. The petitioner preferred an appeal before the Building Tribunal, Kolkata Municipal Corporation along with an application for stay of the

order of demolition and in disposing of the stay application, the appellate authority, by an order passed on 5th January, 2024 turned down the prayer of the petitioner by an elaborate observation on the facts and law. The appeal is still pending.

The petitioner prays for stay of the order of demolition dated 22nd March, 2023 till disposal of the appeal. The primary ground taken by the petitioner is that notice of hearing under Section 400(1) of the Act of 1980 was not served upon the petitioner and he was deprived of an opportunity of hearing before the authority prior to passing the said order.

Per contra, learned counsel for the respondents submits that upon refusal of the petitioner to receive the notice, the same was affixed in the property of the petitioner. Learned counsel submits that the appeal has been virtually disposed of by the authority in considering the stay application.

It is a fact that the appellate authority has virtually disposed of the appeal in considering the stay application filed by the petitioner. But at the same time, since the appeal is still pending, the petitioner may have additional issues to raise before the appellate forum at the time of hearing of the appeal in terms of the memorandum of appeal filed by him.

Since the appeal preferred against the order of demolition is still pending, refusal to stay the said order

till disposal of the appeal shall render the appeal infructuous.

In view of the above, the appellate authority is requested to consider and dispose of the appeal within two weeks from the date of communication of this order upon affording reasonable opportunity of hearing to both the parties, in accordance with law.

The appellate authority shall not grant any unnecessary adjournment to either of the parties in disposing of the appeal.

The order impugned dated 5th March, 2024 is accordingly set aside.

The order of demolition dated 22nd March, 2023 be stayed till disposal of the appeal.

It is made clear that this Court has not gone into the merits of the case and the appellate authority shall be at liberty to deal with the appeal independently in accordance with law without being influenced by any observation which may have been made in this order.

Since nothing further remains to be adjudicated in this civil revision, pendency of the civil revision shall not serve any fruitful purpose and the same is therefore, disposed of.

There shall however, be no order as to costs.

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

(Suvra Ghosh, J.)