

Item No.5

09.02.2024
Ct-24

In the High Court At Calcutta
Constitutional Writ Jurisdiction
Appellate Side

WPA 3223 of 2024
Biplab Mondal

v.

Kolkata Municipal Corporation & Ors.

Mr. Dinendra Nath Chatterjee
Mr. Partha Sengupta
Mr. Biswaroop Sengupta
... for the petitioner.

The matter relates to certain unauthorized construction at premises no. 57/27, Santosh Roy Road, Ward No. 123, Borough-XVI of the Kolkata Municipal Corporation.

An order of demolition was passed in respect of the subject premises on August 8, 2023 under Section 400(1) of the Kolkata Municipal Corporation Act, 1980. The same has been challenged by the petitioner before the statutory appellate forum being BT Appeal No. 181 of 2023.

The date was fixed by the Tribunal for hearing of the stay application in connection with the appeal on February 1, 2024. On the said date the Tribunal was not functional, as it has been reported that the Chairman of the Tribunal is not sitting. The appeal has since been adjourned.

In the meantime, a notice under Sections 544 and 546 of the Kolkata Municipal Corporation Act, 1980 has been issued by the Executive Engineer of the borough fixing February 9, 2024 i.e., today as the date of demolition of the unauthorized construction.

The petitioner submits that as the appeal is pending consideration before the appellate forum, accordingly, the order of demolition ought not to be implemented at this stage.

None appears on behalf of the Kolkata Municipal Corporation.

It appears that the order of demolition is already under scrutiny before the statutory appellate forum. If the said order of demolition is executed prior to the appeal being heard, then the appeal itself will be rendered infructuous and the petitioner will be left remediless. The petitioner ought to get one opportunity before the appellate forum to assail the impugned order of demolition and agitate his grievance.

As it has been submitted that the statutory appellate forum is not functional at present, accordingly, the impugned notice under Sections 544 & 546 of Kolkata Municipal Corporation Act, 1980 is directed to be kept in abeyance till May 31, 2024 or until further order, whichever is earlier. The Tribunal is requested to hear the stay application filed by the petitioner preferably by April 30, 2024.

The writ petition stands disposed of.

The respondent authorities are directed to act on the basis of the server copy of this order which will be available in the official website of this Court.

Urgent certified photocopy of this order, if applied for, be supplied to the parties expeditiously on compliance of usual legal formalities.

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(Amrita Sinha, J.)