

05.08.2024
Item No.02
Crt.No.02
b.r.

WPA 19359 of 2024

Aslam Hossain
-vs-
The State of West Bengal & Ors.

Ms. Chaitali Bhattacharyya
Mr. Protim Chakraborty
Ms. Tapasi Das
..... for the petitioner.

Mr. Somnath Ganguli
Ms. Kalpita Paul
.... For the State-Respondents.

Mr. Biswajit Mukherjee
Mr. Mihir Kundu
.... For the Kolkata Municipal Corporation.

On the urgency pleaded on behalf of the petitioner and in view of the determination being assigned before this Court today, this writ petition has been taken up for consideration by publishing the same in the supplementary list.

Affidavit of service filed in Court today, is taken on record.

Ms. Chaitali Bhattacharyya, learned advocate appears for the petitioner.

Mr. Somnath Ganguli, learned State counsel appears for State-respondents.

Mr. Biswajit Mukherjee, learned counsel appears for the Kolkata Municipal Corporation (for short, KMC).

The petitioner has assailed the impugned order of demolition dated **March 30, 2024** along with the notice under **Sections 544 and 546 of the Kolkata Municipal Corporation Act, 1980** consequential to **Section 400(1) of the Act**. The petitioner submits that when the petitioner's representative went to file the statutory appeal before the jurisdictional Kolkata Municipal Building Tribunal, the appeal was not allowed to be filed on the plea that the Building Tribunal is not in operation for the time being.

Learned counsel for the petitioner submits that **tomorrow (06.08.2024)** is the date fixed for demolition as would be evident from **Page-70** to the writ petition.

Learned counsel appearing for the KMC has also confirmed that for the time being the jurisdictional Building Tribunal is not in operation due to the unavailability of the Member.

In view of the above, the appropriate authority of the KMC and the office of the jurisdictional Building Tribunal are directed to accept the appeal from the petitioner along with any interlocutory application to be filed therewith subject to its maintainability, in the event, such appeal is filed within a period of **three days** from today.

In the event, such an appeal is filed by the petitioner then the respondent authorities shall not take

any further step or coercive step to give effect to its order dated **March 30, 2024** till **one month** from the date of the jurisdictional Building Tribunal shall start its operation.

The jurisdictional Building Tribunal immediately after commencement of its operation shall deal with and dispose of the appeal as expeditiously as possible in accordance with law.

The petitioner shall be at liberty to mention the appeal with connected applications, if any thereto, immediately after the Building Tribunal shall commence its regular functioning.

It is made clear that, this Court has not gone into the merits of the rival claims of the parties in this writ petition and the parties to the said proposed appeal shall be at liberty to urge whatever points they wish to urge by relying upon whatever records and documents they wish to rely upon before the jurisdictional Building Tribunal.

It is further made clear that this order shall not create any right or equity in favour of the petitioner and the Building Tribunal shall hear the appeal on its merit. The Building Tribunal shall not be influenced by any observation made by this Court and shall decide the appeal independently in accordance with law.

Since affidavits are not called for, the allegations made in this writ petition are deemed not to have been admitted by the respondents.

With the above observations and directions, this writ petition, **WPA 19359 of 2024** stands **disposed of**, without any order as to costs.

Photostat certified copy of this order, if applied for, be furnished expeditiously.

(Aniruddha Roy, J.)