

OD-3

WPO/31/2024
IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
ORIGINAL SIDE

GOUTAM DAS AND ORS.
VS
THE KOLKATA MUNICIPAL CORPORATION AND ORS.

BEFORE:

The Hon'ble JUSTICE AMRITA SINHA

Date: 18th January, 2024.

Appearance:
Mr. P.S. Deb Barman, Adv.
Mr. Amit Gupta, Adv.
Mr. Anindya Bose, Adv.
. . .for the petitioner.

Mr. Alak Kr. Ghosh, Adv.
Mrs. Sima Chakraborty, Adv.
. . .for the K.M.C.

The Court: The premises no.63B, Raja Naba Krishna Street, Ward No.10, Borough-II of the Kolkata Municipal Corporation is facing an order of demolition passed by the Special Officer (Building).

The person aggrieved has preferred statutory appeal before the Municipal Building Tribunal being BT Appeal No.205 of 2023. The said appeal was filed within the prescribed period. No order has been passed on the appeal till date.

During pendency of the appeal, the Executive Engineer (Civil)/Building Borough-II of the Corporation issued notice under Sections 544 and 546 of the KMC Act 1980 intimating the person responsible that the assistant and workmen of the Corporation will enter the aforesaid premises on 19th January, 2024 for the purpose of demolishing the unauthorised/dangerous

structure namely construction of RCC column and slab in the ground and the first floor of the subject building as per the order of the Special Officer.

It has been submitted by the learned advocate representing the petitioners that if the alleged unauthorised construction is demolished prior to the appeal being decided by the appellate forum, then the appeal will be rendered infructuous.

As it appears that the person aggrieved has approached the statutory forum for relief, the Executive Engineer ought to wait for the outcome of the pending appeal. If the structure in question is demolished, then the petitioners will be rendered remediless.

In view of the above, Executive Engineer (Civil)/Building/Borough-II is restrained from giving any effect and/or further effect to the impugned notice dated 10th January, 2024 till 30th April, 2024. If the petitioners are unable to obtain any order staying operation of the order of demolition passed by the Special Officer (Building) then it will be open for the Corporation to proceed with the execution of the order passed by the Special Officer.

The Tribunal is requested to consider and dispose of the application for stay filed by the appellant at the earliest but prior to 30th April, 2024. Affidavit of service is taken on record.

The writ petition stands disposed of.

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

(AMRITA SINHA, J.)