

WPO No.93 of 2024
IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
ORIGINAL SIDE

SRI KRISHNA ARJUN ADHIKARY
VERSUS
KOLKATA MUNICIPAL CORPORATION & ORS.

BEFORE:
The Hon'ble JUSTICE AMRITA SINHA
Date: 7th February, 2024.

Appearance:
Mr. Saurabh Guha Thakurata, Adv.
Mr. Abhratanu Sarkar, Adv.
Ms. Nilanjana Sarkar, Adv.
...For Petitioner.

Mr. Gurudas Mitra, Adv.
Mr. Swapan Kr. Debnath, Adv.
...For KMC

The Court:-Affidavit of service filed in Court today is taken on record.

Premises no. 44, Izazaulla Lane, Ward-89, Borough-X of the Kolkata Municipal Corporation is suffering an order of demolition passed by the Special Officer (Building), Kolkata Municipal Corporation on 08.12.2023.

Being aggrieved by the said order, the petitioner preferred an appeal before the statutory appellate forum on 01.02.2024. The date fixed for consideration of the appeal before the learned Tribunal is 29.02.2024.

The petitioner alleges that during pendency of the appeal the men and agents of the Kolkata Municipal Corporation visited the subject premises and demolished a portion of the said construction. The demolition took place without any notice being served upon the petitioner.

It has been submitted that the learned Municipal Building Tribunal is non functional as the Chairman is not sitting. Taking advantage of the non availability of the appellate forum, the men and agents of the Kolkata Municipal Corporation proceeded to execute the order of demolition which is pending scrutiny before the appellate forum.

Learned advocate representing the Corporation submits, upon instruction that, a notice of demolition was issued on 20.01.2024.

Learned advocate representing the petitioner admits that the notice under Sections 544 & 546 of the Kolkata Municipal Corporation Act, 1980 was affixed on the outer wall of the subject premises on 23.01.2024 intimating that the demolition will take place on 06.02.2024.

Upon hearing the parties, it appears that the impugned order of demolition is already under scrutiny before the learned Tribunal. On account of the non-functioning of the learned Municipal Building Tribunal, the petitioner's appeal cannot proceed. The petitioner ought to be given the chance to place the appeal before the statutory appellate forum. If the order of demolition is executed prior to the appeal being heard then, the appeal will become infructuous.

In view of the above, the Corporation is restrained from proceeding any further with the impugned order of demolition till 30.04.2024 or until further order, whichever is earlier.

As pointed out by the learned advocate representing the Corporation that the four storied construction has been made without any sanction plan, accordingly, with the view of not creating any further legal complication in the matter, the petitioner is restrained from making any further construction in any manner whatsoever at the subject premises. The petitioner is also restrained from creating any third party rights in the subject premises. No portion of the property shall be transferred /sold or alienated in any manner whatsoever till the order is passed by the statutory appellate forum in this regard.

The Officer-in-Charge, Charu Market Police Station is directed to keep strict vigil over the property to ensure that no construction work is made at the subject premises and third party rights are not created in respect of the same. The learned Tribunal shall take a decision as to whether water and electricity connection may be permitted in the unauthorized structure.

The learned Tribunal is directed to consider the prayer for stay of the impugned order of demolition made by the petitioner within the time as stipulated hereinabove.

The 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.)

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