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ORDER SHEET
WPO No.135 of 2024
IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
ORIGINAL SIDE

NOWSHIN TANZIM
VS
KOLKATA MUNICIPAL CORPORATION & ORS.

BEFORE:
The Hon'ble JUSTICE AMRITA SINHA
Date:19th February, 2024.

Appearance:
Mr. Somnath Gangopadhyay, Adv.
. . .for the petitioner.

Mr. Gurudas Mitra Adv.
Mr. Atish Kr. Biswas, Adv.
. . .for the K.M.C.

The Court:- The matter relates to premises no.2/1B, Satish Chandra Mukhopadhyay Sarani, Ward No.54, Borough-VI of the Kolkata Municipal Corporation.

Challenging the order of demolition passed in respect of the unauthorized construction made at the subject premises, the petitioner approached the learned Municipal Building Tribunal by filing B.T. Appeal No.21 of 2024. The date fixed by the learned Municipal Building Tribunal for consideration of the said appeal is 11th March, 2024.

In the meantime, the Executive Engineer (Civil)/Building/Borough-VI has issued a notice on 6th February, 2024 intimating the petitioner that the men and agents of the Kolkata Municipal Corporation will enter the subject premises for demolition of the unauthorized structure in terms of the order passed by the Executive Engineer (Civil)/Building/Borough-VI dated 1st December, 2023.

According to the provision of law, any person aggrieved by the order of demolition may prefer an appeal within a period of thirty days from the date of the order of demolition.

Admittedly, in the present case, the appeal was filed only after notice under Sections 544 & 546 of the Kolkata Municipal Corporation Act, 1980 was issued.

Though, *prima facie*, it appears that there has been delay in preferring the appeal before the statutory appellate forum but as the same is pending consideration before the appellate forum, it is for the said forum to take a decision whether to admit the appeal by condoning the delay or not. As the date for consideration of the appeal has been fixed by the learned Municipal Building Tribunal on 11th March, 2024, accordingly, the Corporation is restrained from taking any further steps pursuant to the impugned notice dated 6th February, 2024 till 31st May, 2024 or until further order, whichever is earlier.

The learned Municipal Building Tribunal is requested to take a decision as regards the maintainability of the appeal before the Tribunal as the same was filed beyond the prescribed period of limitation and thereafter decide whether to stay the impugned order of demolition or not.

The Executive Engineer (Civil)/Building/Borough-VI of the Kolkata Municipal Corporation is directed to immediately transmit the records of the case before the statutory appellate forum so that the matter may be decided by the Tribunal without any delay.

As the unauthorized structure is under order of demolition, accordingly, the person responsible for making construction and the owner of the subject construction are restrained from transferring/ selling/ alienating/ creating third party interest in the subject premises. The petitioner is also restrained from carrying out any construction at the subject premises till further order.

The Officer-in-Charge, Beniapukur Police Station is directed to keep strict vigil over the property to ensure that construction in any manner whatsoever is not carried out at the subject premises.

The writ petition stands disposed of.

Report filed by the engineers of the Kolkata Municipal Corporation be retained with the record.

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

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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