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ORDER SHEET
WPO/163/2024
IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
ORIGINAL SIDE

DR. SANJAY GUPTA
VS
KOLKATA MUNICIPAL CORPORATION AND ORS.

BEFORE:
The Hon'ble JUSTICE KAUSIK CHANDA
Date: 24th June, 2024.

Appearance:
Mr. Nilay Sengupta, Adv.
Mr. Pradip Saren, Adv.
Ms. Saheli Hembram, Adv.
Mr. Sujit Banerjee, Adv.
...for the petitioner

Mr. Alak Kumar Ghosh, Adv.
Mr. Swapan Kumar Debnath, Adv.
...for the K.M.C.

Mr. Debjit Mukherjee, Adv.
Ms. Susmita Chatterjee, Adv.
...for the State

The Court: It is the case of the petitioner that a demolition order was passed by the Corporation on August 31, 2023 against an unauthorized construction raised by respondent at premises no.170(P), Ahiritola Street, Ward No.19, Borough No.II.

It is the further case of the petitioner that said order was carried in an appeal by the respondent. The appeal was registered as B.T. Appeal No.180 of 2023 before the Building Tribunal.

Learned advocate appearing for the petitioner submits that a Coordinate Bench of this Court by an order dated October 10, 2023 passed in W.P.O.

No.1685 of 2023 directed the Corporation to demolish the impugned construction if no stay order was obtained by December 22, 2023. The petitioner submits that since the Building Tribunal till date has not passed any stay order, the Corporation is duty bound to demolish the impugned construction.

I am not persuaded by the argument advanced by the learned advocate for the petitioner. It is true that a coordinate Bench directed the Corporation to proceed with the demolition work after December 22, 2023 in absence of any stay order from the Building Tribunal. The records of the proceedings before the Building Tribunal show that a stay application was filed by the respondent but the Building Tribunal could not dispose of the same. It is also an admitted position before this Court that as on date the Building Tribunal is not functioning for want of a Judicial Member.

I am also not inclined to read the time period fixed by the Coordinate Bench as mandatory. In my view, the order was passed “in terrorem” so that the Corporation acts diligently in compliance with the order of the Court. The remedy of the appeal should not be rendered nugatory when the petitioner filed the stay application in due time. In that view of the matter, I am not inclined to pass any mandatory order upon the Corporation to proceed with the demolition work.

In view of this matter, I am not inclined to entertain this writ petition. Accordingly, WPO/163/2024 is dismissed.

(KAUSIK CHANDA, J.)