

OD-2

WPO/206/2024
IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
ORIGINAL SIDE

SAIFULLAH KHAN
VS
THE KOLKATA MUNICIPAL CORPORATION AND ORS

BEFORE:
The Hon'ble JUSTICE AMRITA SINHA
Date: 13th March, 2024.

Appearance:
Mr. Dyutiman Banerjee, Adv.
Mr. S. Nandy, Adv.
. . .for the petitioner.

Mr. Srijan Nayak, Adv.
Ms. Manisha Nath, Adv.
. . .for the K.M.C.

The Court: The petitioner is aggrieved by the notice dated 3rd of February, 2024 issued under Sections 544 and 546 of the KMC Act, 1980 by the Executive Engineer (Civil)/Building/Br. III intimating the petitioner that the men and agents of the Kolkata Municipal Corporation will enter the premises no.44/1, Canal East Road with assistants and workmen on 12th March, 2024 and 13th March, 2024 for demolition of the unauthorized/dangerous structure namely seven storied RCC framed structure in accordance with the order of demolition passed by the Executive Engineer (Civil)/Building/Br.III dated 12th September, 2023 under Section 400(1) of the KMC Act. 1980.

The petitioner being aggrieved by the order of demolition has preferred statutory appeal, though beyond the prescribed statutory period, before the Municipal Building Tribunal being B.T. Appeal No. 207 of 2023. The stay application in connection with the said appeal has been fixed for consideration by the Tribunal on 27th of March, 2024.

Specific submission of the petitioner is that no inspection was conducted to ascertain the nature and extent of unauthorized construction in terms of the order dated 4th January, 2024 passed by this Court in WPA No.17307 of 2021 (*Zahid Mahmood versus The Commissioner of K.M.C. & Ors.*).

It has been submitted that the figure mentioned in the order of demolition that is 2856 Sq. Meter held to be constructed illegally is incorrect.

Upon hearing the parties and upon perusal of the materials on record it appears that a statutory appeal is pending consideration before the appellate forum. The appellate forum is reported to be non-functional at present. The petitioner ought to be given one chance to test the legality of the demolition order before the appellate forum. The appeal of the petitioner was filed in November 2023 and the stay application is yet to be disposed of. If the subject construction is demolished prior to the appeal being heard, the appeal will be rendered infructuous and the petitioner will be left remediless.

In view of the above, the Executive Engineer (Civil/Building) Borough III is restrained from giving any effect and or further effect to the impugned order of demolition dated 12th September, 2023 till 31st May, 2024. The Tribunal is

directed to decide the stay application filed by the petitioner at the earliest but positively within the time limit specified hereinabove.

The Executive Engineer (Civil/Building) Borough III is directed to immediately transmit the records of this case to the Tribunal so that the matter may be considered and decided without any delay.

The petitioner is restrained from carrying out any construction whatsoever in the subject premises and further restrained from transferring/selling/alienating or creating third party interest in the unauthorized construction till the matter is decided by the Tribunal.

The Officer-in-Charge Narkeldanga, 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. In the event the petitioner fails to obtain any order staying/vacating or setting aside the order of demolition within 31st May, 2024, it will be open for the Corporation to proceed to execute the order of demolition in accordance with law.

WPO No. 206 of 2024 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.)

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