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ORDER SHEET
WPO No.480 of 2024
IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
ORIGINAL SIDE

UDAY CHAND RAY
VERSUS
THE KOLKATA MUNICIPAL CORPORATION & ORS.

BEFORE:
The Hon'ble JUSTICE AMRITA SINHA
Date: 21st May, 2024.

Appearance:
Mr. Raghunath Chakraborty, Adv.
Ms. Sabnam Sultana, Adv.
...For Petitioner.

Mr. Gurudas Mitra, Adv.
Ms. Manisha Nath, Adv.
...For KMC.

The Court:- The order passed by the Special Officer [Building], Kolkata Municipal Corporation on 5th December, 2023 has been challenged before the statutory appellate forum being B. T. Appeal No.57 of 2024. The said appeal, however, has not been heard as the appellate forum is non functional on account of non availability of the Chairperson.

On account of pendency of the appeal, no decision could be taken thereon whereas, the Executive Engineer [Civil], Building Department, Borough-VIII has issued notice under Sections 544 & 546 of the Kolkata Municipal Corporation Act, 1980 fixing 21st May, 2024 as the date for implementing the order of demolition.

As the order of demolition is an appealable one and the person aggrieved has preferred an appeal which could not be heard for no fault on the part of the appellant, accordingly, the order of demolition ought not to be implemented at this stage.

The Court has been made aware of the direction passed by the Hon'ble Division Bench of this Court on 5th

April, 2024 in M.A.T. No. 658 of 2024 with I.A No.CAN/1/2024 [Smt. Sumana Datta Chatterjee Vs. The Kolkata Municipal Corporation & Ors.] wherein the Court directed the State Government to take immediate steps for filling up the vacant post of Chairperson of the Municipal Building Tribunal, Kolkata. Direction was passed upon the Municipal Affairs Department, Government of West Bengal to do the needful within one month from the date of communication of the order. The time period within which the State Government ought to have taken steps has expired.

The State Government ought to realise that on account of non filling the vacant post, appeals from the order passed under Section 400[1] cannot be decided. The person aggrieved ought not to remain remediless.

The State Government is directed to take immediate steps to comply with the direction passed by the Hon'ble Division Bench as mentioned hereinabove.

The Executive Engineer (Civil)/Building Department, Borough-VIII is directed to forthwith transmit records of this case to the appellate forum so that the appeal may be decided immediately upon the same being functional. The Tribunal is requested to dispose of the stay application/prayer for stay within a period of 30 (thirty) days from the date of the Tribunal being functional.

The Tribunal shall endeavour to dispose of the appeal positively within a period of six months from the date of the same being functional.

The Corporation is directed not to give any effect or further effect to the impugned notice issued under Sections 544 & 546 of the Act, 1980 passed in furtherance to the order dated 5th December, 2023 till one month after the Building Tribunal becomes functional.

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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