

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
ORIGINAL SIDE

WPO/763/2024

SHOIB BURHAN AHMED & ORS.
VERSUS
KOLKATA MUNICIPAL CORPORATION AND ORS.

BEFORE:

THE HON'BLE JUSTICE ANIRUDDHA ROY

Date : 5th August 2024.

APPEARANCE:

Mr. Soumyen Datta, Advocate
Mr. Tapas Singha Roy, Advocate
Mr. Gora Chand Roychowdhury, Advocate
..... for petitioners.

Mr. Biswajit Mukherjee, Advocate
Ms. Manisha Nath, Advocate
..... for respondents.

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

In view of the urgency pleaded and upon the determination being assigned to this Court, this writ petition has been taken up.

Mr. Soumyen Datta, learned counsel, appears for the petitioners. Ms. Manisha Nath, learned counsel, led by Mr. Biswajit Mukherjee appears for Kolkata Municipal Corporation.

The four individual petitioners claiming to be owners of the subject premises have challenged through this writ petition the order of demolition dated July 2, 2024, Annexure-P2 at page 21 to the writ petition and the consequential directions for vacating the premises dated July 27,

2024, Annexure-P4 at page 23 to the writ petition. Tomorrow i.e. August 6, 2024 is fixed for demolition of the alleged unauthorized structures at 12:00 noon.

Mr. Soumyen Datta, learned counsel appearing for the petitioners contends that no notice of hearing was served upon the petitioner Nos.2, 3 and 4. Only, the first petitioner was served with the notice of hearing. The first petitioner when went to attend the hearing on June 10, 2024, he was not allowed to participate in the hearing. The petitioners contend, there is a breach of principle of natural justice which is in-built in the statutory provision. Hence, the order of demolition should be set aside.

Ms. Manisha Nath, learned counsel appearing for the Kolkata Municipal Corporation, refers to the representation of the first petitioner dated July 12, 2024 at page 22 to the writ petition and submits that on his request, opportunity of hearing was also granted to the first petitioner and he has participated in the hearing. However, the Corporation fails to show that notice of hearing was served upon all the petitioners individually, which is the requirement of law.

The impugned order of demolition and the consequential direction for demolition fixing the time for demolition are appealable before the jurisdictional Building Tribunal. The admitted position is that the jurisdictional Building Tribunal is not in operation due to non-availability of its member. This is an administrative issue, for which the petitioners cannot suffer without the statutory remedy.

In view of the above, the impugned order of demolition dated July 2, 2024 along with the consequential communication dated July 27, 2024 fixing the date and time for demolition which is tomorrow stands set aside and quashed.

The jurisdictional hearing authority shall conduct the hearing on August 12, 2024 at his office at 12:00 noon. All the four petitioners shall remain present. After granting opportunity of hearing to all the four petitioners, the jurisdictional hearing authority shall pass its reasoned order in accordance with law. The reasoned order shall be communicated to all the four petitioners positively within a period of two working days thereafter.

It is made clear that since on the prayer of the petitioners made before this Court today, the time and date of hearing has been fixed, no further notice shall be served upon them.

It is further made clear that the impugned order shall be communicated to all the four petitioners at their address at 70/1C, A.P.C. Road, Kolkata – 700009 and also to the learned advocate on record for the petitioners in this writ petition.

It is made clear that this Court has not gone into the merits of this writ petition.

This order shall also not create any right or equity in favour of the petitioners if the petitioners do not succeed in their respective contentions before the hearing authority, strictly in accordance with law.

Learned advocates appearing for the parties shall be at liberty to communicate the gist of this order to their respective clients.

Since affidavits are not called for, the allegations made in this writ petition are deemed not to have been admitted by the respondents.

With the above observations and directions, this writ petition, **WPO/763/2024** stands **disposed of**, without any order as to costs.

(ANIRUDDHA ROY, J.)

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