

Sl. No.03
27.01.2025
Suman
Ct. 15

WPA 22651 of 2023

Gita Saha
Vs.
Bidhannagar Municipal Corporation and Ors.

Mr. Rafiqul Islam
Ms. Manika Sarkar
..for the petitioner

Mr. Tirthankar Dey
..BMC

Private respondent no.6 is not represented at the time of the call.

The Bidhannagar Municipal Corporation issued a demolition order on September 25, 2018, concerning a construction located at Mouza-Jyangra, J.L. No. 16, R.S. Khatian No. 228, R.S. Dag No. 114, Ramkrishnapally, Aswininagar, Baguiati, Kolkata-7000159. This order was passed in compliance with an order dated September 5, 2018, in WP 14252(W) of 2018 filed by Respondent No. 6.

Challenging the demolition order, the petitioner filed an appeal before the Mayor of the Bidhannagar Municipal Corporation on November 14, 2018. The petitioner's grievance is that, despite pendency of the appeal, the Corporation is attempting to implement the demolition order dated September 25, 2018.

The learned advocate for the Corporation, however, submits that the appropriate appellate authority is the Municipal Building Tribunal, in accordance with Section 295(A) of the West Bengal Municipal Corporation Act. Thus, the appeal has not been filed before the proper authority. He further concedes that a Chairman has been appointed to the Municipal Building Tribunal, but due to administrative constraints, the Tribunal has not yet been made functional.

It appears that subsequently, the writ petitioner filed, WP 23060(W) of 2018, which was filed and disposed of on November 27, 2018, by a Co-ordinate Bench of this Court. The Court requested that the Appellate authority hear and dispose of the appeal filed by the petitioner as expeditiously as possible, preferably within six weeks from the date of communication of the order.

It is undisputed that the building in question is a 400 square-foot construction, solely used for the petitioner's residential purposes.

I am of the view that the demolition order dated September 25, 2018, should not be enforced unless the appeal filed by the petitioner is disposed of in accordance with the law. Moreover, the Bidhannagar Municipal Corporation should have promptly informed

the petitioner that the appeal, once filed before the Mayor, was not maintainable.

In view of this, the present writ petition is disposed of with the following directions:

The Corporation shall notify the petitioner to prefer an appeal before the appropriate Appellate authority within one month from date against the demolition order dated September 25, 2018.

The petitioner shall have the liberty to file an appeal before the appropriate Appellate authority within one month from the date of communication from the Corporation.

If the appeal is filed within the prescribed period, the Appellate authority shall condone any delay in filing the appeal.

The appeal shall then be disposed of in accordance with the law. Until such proceedings are concluded, the Corporation shall not implement the demolition order dated 25, 2018.

Accordingly, **WPA 22651 of 2023** is disposed of.

Urgent photostat certified copy of this order, if applied for, be supplied to the learned advocates for the parties on usual undertakings.

(Kausik Chanda, J.)