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W. P. A. 11286 of 2019

(Via Video Conference)

**Smt. Parul Bala Debi @ Smt. Parul Bala Ram
Vs.
Kolkata Municipal Corporation & Ors.**

Mr. Probal Kumar Haldar
Mr. Sudarsan haldar
Ms. Champa Halder
... For petitioner.

Mr. Barin Banerjee
Ms. Era Ghose
... For KMC.

Mr. Indrajit Sen
Mr. S. Medda
... For respondent no. 3.

Petitioner has come before this Court seeking, inter alia, direction for demolition of shoproom in ground floor of 81 Rajdanga Naba Pally in Kasba. Mr. Haldar, learned advocate appears on her behalf and submits, the construction is in violation of sanctioned plan, made by private respondent. His client is owner of the plot.

Mr. Banerjee, learned advocate appears on behalf of the Corporation and submits, a proceeding was commenced and concluded regarding the unauthorized construction. Conclusion was by order dated 18th October, 2004 passed by Special Officer (Building). Order was for retention and basis given in it. He submits further, this writ petition is not maintainable since petitioner could have taken steps to challenge the order, but did not do so. Mr. Sen, learned advocate

appears on behalf of private respondent and submits, the proceeding had participation of petitioner. Mr. Halder responds that the order was not served on his client.

It appears petitioner had earlier moved this Court by W.P. 20330 (W) of 2010, which was disposed of by order dated 6th October, 2010, directing consideration of her representation dated 13th March, 2007. Said representation has not been disclosed in this writ petition. On query from Court, Mr. Halder submits, by that representation his client had contended, she is owner of the plot. She did not make any unauthorized construction. Private respondent, not being the owner, could not have applied for regularization. As such, there could not be retention and collection of fees by the Corporation.

Petitioner's assertion is that she was not served copy of said order dated 18th October, 2004, made by Special Officer (Building). Following was said in the order: -

“ From the D/Sketch, it is seen that the Dept. has brought allegation for construction of shop room, by constructing walls occupying space at ground floor, on the southern side of the stair-lift room. It has also been clarified by a.e. that for such unauthorized construction the stipulated space for parking of cars have not been occupied. On the other hand, this space for shop, was sold to

Smt. Indrani Gupta as per deed of conveyance, on consent of all parties for which she has gained the right or erection. Now, it is seen that for such construction there is no infringement of any major building rule excepting building rule 84 for not providing plinth height for 0.60 M above ground level and also for rule 85, for not providing of 2.75M height of shop room, as the height is found to be 2.50M.”

There is no mention of above order in order dated 6th October, 2010, by which her earlier writ petition was disposed of in presence of, at least, the Corporation. Even though empanelled learned advocate was called upon by Court to represent the Corporation, when said writ petition was moved and disposed of, presumption that petitioners were not served retention order is possible, because it appears from said order, the writ petition was moved upon service. As such, Court deems this to be fit case where petitioner can be directed to appeal before the statutory authority against said order dated 18th October, 2004, using this presumption in her favour, in praying for condonation of delay.

In event petitioner takes steps to challenge said order, the statutory authority will act in accordance with law. Said authority, vested with power of hearing the appeal, will deal with it.

Writ petition is disposed of.

(Arindam Sinha, J.)