

unlisted
03.02.2021
KC

WPA 3714 of 2021

Robiul Amin Molla & Ors.
Vs.
The Kolkata Municipal Corporation & Ors.

Mr. Syed Nurul Arefin
Ms. Mithu Singha Mahapatra
Ms. Saswati Chatterjee.
... for the petitioners.

Mr. Alok Ghosh
Mr. S. Panda.
... for the KMC.

The petitioner has challenged the demolition order dated 27th January, 2021 in respect of unauthorised building, which is annexure 'P-8' of the writ application. This notice of demolition is a culmination of the order passed by the OSD(Building)/South dated 19th July, 2017. In the said order dated 19th July, 2017, *inter alia*, the following has been recorded:

"The Notice U/s. 400(1) was served on 19.04.2017.

As per report from Concerning Borough - Infringement of Rules 62, 69, 70, 74, 133 & 134 of Building Rules 2009.

The Representative of the P.R. was present and the Representative of the complainant was also present at the time of hearing.

As stated by Complainant side, Complainant expressed strong objection regarding this unauthorised construction.

In my observation/Opinion - This is long pending case. P.R. constructed ignoring all action taken from the end of department of K.M.C. The violation of Building Rules 62, 69, 70, 74, 133 & 134 of Building rule 2009 are so grave and serious and infractions of Building Rules for the same in terms of the provision for regulation framed for hearing & regularisation of the case U/s. 400(1) of KMC Act, 1980, as amended on June 20, 2015 could not be considered. Order has already been passed for demolition of unauthorised structure at U-110, Karbala Road on 20.06.2016.

It is also informed that the plot including unauthorised structure is separated into three premises No. i.e. U/110A, U/110 & U/110B. The Structure is also encroached KMC Road. P.R. also submitted Assessment Book Copy for the three premises. Accordingly the site has been inspected and taken action upon the three premises & the matter has been heard.

Going through the statement of P.R. I am inclined to pass demolition order for entire structure marked in D. Sketch in respect of the impugned unauthorised construction..

As intimated by P.R. a case is pending before Ld. 3rd Civil Judge at Alipore."

After recording the submissions of the parties and consulting the records as has been mentioned in the aforesaid observation including encroachment of KMC Road, the following order was passed:

"Considering the gravity of situation, Safety of Public and to avoid accident resulting in loss of life. The P.R. are directed to demolish the entire unauthorised structure as mentioned in precis and shown in D. Sketch Plan by red colour of D. Case No. 16/Br.-XV/2017-18, within 30 days from the date of communication

of this order in default the KMC Authority will be at liberty to demolish the same cost will be recovered from P.R.

All the order of Hon'ble Court have to be abide by"

The petitioner has come up before this Court challenging the said demolition order dated 27th January, 2021 on the ground that three appeals before the Municipal Building Tribunal are pending. But it has been stated that no order of stay has been granted in those appeals and in fact by order dated 28th November, 2018, the prayer of stay in respect of the appeals were refused, which appears from prayer (b) of the writ application. The other ground is that the Municipal Authority cannot issue any such order of demolition because of an order passed by this Court dated 31st August, 2016. The order dated 31st August, 2016 was passed in WP No. 812 of 2016 wherein it is found that for a period of three months and three weeks from the date of the order, no demolition would be carried out in furtherance of the demolition order dated 20th June, 2016. Another writ application was filed by the complainant (Md. Mostafa Haldar), who made a complaint in respect of the illegal construction, which was numbered as WP 139 of 2017. In that writ application on 17th March, 2017, the Writ Court held that the relief claimed in the writ application

cannot be granted at that stage but it was further directed by the said order that the Deputy Chief Engineer (Building)/South will take the matter in terms of the order dated 31st August, 2016 (passed in WP 812 of 2016) and a date of hearing was fixed therefor on 22nd March, 2017 with a further direction that the decision was to be taken within two weeks from the date of the order i.e. within 17th March, 2017. The matter was heard by the OSD (Building)/South on 11th May, 2017 and 17th July, 2017. The result of hearing and the order passed has already been recorded above.

From the grounds taken in the writ application and after hearing parties in this matter, I find that there is no ground at all for staying the order of demolition of unauthorised building dated 17th January, 2021 as because no case has been made at all for interfering with this demolition order. The pendency of the appeal does not operate as a stay. The other ground that the municipal authority was restrained from taking any step by the order dated 31st August, 2016 is wholly untrue as by that order, the order of demolition was stayed only for three months and three weeks. In the course of hearing and from the writ application placed before me, I do not find that there is any infirmity in the decision making

process of the authority towards order of demolition of the illegal part of the building being the D. Sketch Map marked with red colour in D. Case No. 16/BR-XV/2017-18 and, therefore, this writ application is dismissed without any order as to costs. There is no impediment to the municipal authority to demolish the part of the building as mentioned in the demolition order dated 27th January, 2021.

As no affidavits have been called for, the allegations made against the respondent/Municipal Corporation is deemed not to have been admitted.

(Abhijit Gangopadhyay, J.)