

09.12.2021
Court No. 19
Item no.03
CP

WPA 4042 of 2021

Sk. Kamal
Vs.
The State of West Bengal & ors.

Mr. Wasim Ahmed

.....for the petitioner.

Mr. Achintya Kr. Banerjee
Mr. Tarun Chatterjee
Ms. Indumouli Banerjee

...for the K.M.C.

the competent team of the Kolkata Municipal Corporation (hereinafter referred to as the corporation), has inspected the premises pursuant to the order of this court and has filed a report. From the report, it appears that there has been unauthorized construction of two additional floors and of some RCC columns. It also appears that the mandatory space as required by the rules have not been maintained. The sanction was given by the corporation for construction on a thika land, subject to the compliance of the rules necessary for constructions on such lands.

The officials of the corporation have *prima facie* found serious violation of the sanction plan. The matter has also been informed to the Officer-in-Charge, Karaya Police Station for necessary action. It

has also been submitted that the corporation has taken steps for initiating proceedings under Section 400(1) of the Kolkata Municipal Corporation Act, 1980.

Affidavit of service is taken on record. It is submitted by Mr. Ahmed, learned advocate for the petitioner, that the respondent no. 8 has expired. According to him, there was no need for substitution of respondent no. 8 as the other person responsible for the construction, i.e. the respondent no. 9 is already on record.

However, the court thinks it necessary that when the corporation initiates the proceedings, all interested parties should be called and heard. Under the circumstances, as the corporation has already found unauthorized construction, the writ petition is disposed of, with the following orders:

- a) An inspection of the premises shall be made. Such inspection shall be held in the presence of the parties, with 48 hours advance notice.
- b) The report of the inspection along with the sketch map denoting the nature and extent of the unauthorized construction shall be prepared and handed over to the parties.
- c) A hearing shall be given to the parties. The parties must also be allowed to furnish

their written version and make oral submissions as also adduce evidence in support of their contentions.

- d) A reasoned order shall be passed and communicated to the parties. On the basis of what transpires at the hearing and during inspection, the proceedings shall be reached to its logical conclusion in terms of the statute.

The court has not gone into the correctness of the claims and counter-claims of the parties and all the disputes shall be decided in accordance with law and independently by the corporation.

The entire exercise shall be completed within a period of five months from the date of communication of this order.

Needless to mention, if any of the parties is not present at the time of inspection, the corporation shall proceed in their absence. The corporation shall also by way of abundant caution, affix a copy of the notice of inspection and the notice of hearing at a conspicuous place and premises in question, apart from issuing the notices by speed post.

The writ petition is, thus, disposed of. There shall be no order as to costs.

Parties are to act on the server copy of this order.

(Shampa Sarkar, J.)