

Item No.16

In The High Court At Calcutta
Constitutional Writ Jurisdiction
(via video conference)

02.07.2021
Ct-24

WPA 6310 of 2021
Shankar Lal Gupta

v.

The Kolkata Municipal Corporation & Ors.

Mr. Saunak Bhattacharyya
Mr. Saunak Mondal
... for the petitioner.

Mr. Srijan Nayak
Mr. Subhrangsu Panda
... for KMC.

The petitioner is the owner of a three storied building at 28/6A, Nakuleshwar Bhattacharjee Lane, Kolkata- 700 026. The petitioner claims to have purchased the building in the year 1990. According to the petitioner the said building was constructed by the erstwhile owner on the basis of a sanctioned plan dated January 20, 1960 issued by the Kolkata Municipal Corporation.

As the condition of the building became dilapidated the petitioner started certain repairing work. Immediately when the repairing work was being made by the petitioner, the Kolkata Municipal Corporation issued a notice under Section 401 of the Kolkata Municipal

Corporation Act, 1980 on February 1, 2020 directing the petitioner to forthwith stop all construction including addition and alteration of the said premises.

The petitioner thereafter received a letter dated October 17, 2020 issued by the Assistant Engineer (Civil) Building Department, Borough-VIII wherein it has been mentioned that a 40" wide Kolkata Municipal Corporation sanctioned alignment line exists through your building and premises, as per office note of Executive Engineer (Civil)/Chief Valuer & Surveyor Department dated March 22, 2020.

It has further been intimated that in view of such alignment line the department is unable to process his proposal for reconstruction of the roof and the petitioner has been asked to demolish the constructed brick wall at the ground storey failing which necessary action could be taken as per the Kolkata Municipal Corporation Act.

The petitioner made a representation before the Kolkata Municipal Corporation by a letter dated November 26, 2020 and renewed his prayer for permission for making the construction/repairing work of the roof. The aforesaid representation of the petitioner has not been considered by the respondent authority till date.

The petitioner refers to the provision of Section 357 of the Kolkata Municipal Corporation Act, 1980. Stress has been laid upon Section 357(1) and 357(2) of the said Act. The proviso to Section 357(6) has been placed before this Court.

The said provision mentions that the Corporation shall, before the cancellation or modification of the regular line, afford, by public notice, a reasonable opportunity to the residents of the premises abutting on such public street to make suggestions and objections with respect to the cancellation or modification of the regular line as aforesaid and shall consider all suggestion or objections as received within a month from the date of communication of such notice.

It has been submitted that the Kolkata Municipal Corporation may if it consider expedient so to do, cancel partly or wholly, or modify the regular line of a public street after a period of ten years from the date of defining the said regular line, provided the object for which the said regular line was defined has not been completed within the said period.

It has been submitted by the petitioner that the building is in existence for a considerable period of time and no notice or intimation was given to the petitioner for demolition of the construction which is standing thereon since 1960. It is only after the petitioner started

repairing the dilapidated structure, the stop work notice was issued and the existence of the alignment line was made known to the petitioner.

The learned advocate representing the Kolkata Municipal Corporation submits that the petitioner cannot be granted any permission for construction and/or repairing any portion of the building which falls on the alignment line.

It has, however, been submitted that since the petitioner's representation praying for permission for making construction/repair is pending consideration at the end of the respondent authority, accordingly, necessary direction may be passed for consideration of the same.

Upon hearing the submissions made on behalf of both the parties it appears that the premises in question seems to be in existence for a considerable period of time. The petitioner has annexed a sanctioned plan to show that the building was constructed in accordance with the same.

If the building is admittedly standing on the alignment line since 1960 without any objection, then the Kolkata Municipal Corporation may be required to take steps in terms of the provision of Section 357(6) of the Kolkata Municipal Corporation Act, 1980. The provision permits the Kolkata Municipal Corporation to

cancel partly or wholly, or modify the regular line of a public street.

The prayer of the petitioner praying for reconstruction/repairing of the existing building is pending consideration at the end of the Kolkata Municipal Corporation.

In view of the above, the instant writ petition is disposed of by directing the respondent no. 2 being the Municipal Commissioner to depute a competent person to inspect the premises in question for the purpose of taking a decision as to whether the alignment line, if any, is required to be modified/cancelled/alterd in terms of provision of Section 357(6) of the Kolkata Municipal Corporation Act, 1980.

The respondent authorities shall afford an opportunity of hearing to the petitioner to produce all relevant documents in his support.

The aforesaid action shall be taken by the Kolkata Municipal Corporation strictly in accordance with law, at the earliest, but positively within a period of twelve weeks from the date of communication of a copy of this order.

The aforesaid respondent shall pass a reasoned order and communicate the same to the petitioner immediately thereafter.

The writ petition stands disposed of.

Urgent photostat certified copy of this order, if applied for, be given to the parties after completion of all legal formalities.

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(Amrita Sinha, J.)