

03.12.2021
Court No. 19
Item no.02
CP

WPA 13692 of 2021

Mrs. A. K. Augustine & anr.
Vs.
The Kolkata Municipal Corporation & ors.

Mr. Anirban Ghosh

....for the petitioners.

Mr. Debjit Mukherjee
Ms. Susmita Chatterjee

....for the K.M.C.

Mr. Susanta Pal
Ms. A. Neogi

....for the State.

Mr. Arindam Banerjee

.....for the respondent no. 8.

The reports filed by the respective parties are taken on record.

The petitioners allege unauthorized construction by the respondent no. 8 at Premises No. 14, Mandeville Gardens, Kolkata – 700029, under Ward No. 68 of the Kolkata Municipal Corporation (hereinafter referred to as the corporation). It is alleged that respondent no. 8 has encroached into the car parking space which is a common area and has built certain unauthorized structures for his personal use. Allegations are of

further encroachment on the footpath in front of the premises.

Mr. Banerjee, learned advocate appearing on behalf of the respondent no. 8, submits that the respondent no. 8 is running an office from the ground floor which was permitted by the corporation for the last 20 years. There has been no unauthorized construction within the meaning of the Kolkata Municipal Corporation Act, 1980. He also submits that the Executive Engineer, Borough-VIII, Building Department of the corporation has some personal interest in the litigation and he must be excluded from the proceedings to be initiated by the corporation on the basis of the directions of this court. It is also submitted by him that the petitioners are actually responsible for having made unauthorized constructions by covering up the car parking space which was a common area, by constructing brick walls.

Mr. Mukherjee, learned advocate appearing on behalf of the corporation, has submitted a report from which it appears that, prima facie, some unauthorized constructions have been detected in the ground floor. He also denies the allegations levelled against a senior officer of the corporation by the respondent no. 8.

The police authorities have filed a report from which it appears that there have been a long standing dispute between the parties.

Having heard the rival contentions of the parties, the Commissioner of the corporation is directed to depute an Executive Engineer or a person higher than the rank of the Executive Engineer apart from the Executive Engineer of the concerned borough to do the following acts:

- a) An inspection be made by the competent authority of the corporation of the premises in question to look into and enquire about the allegations and counter allegations of the parties. Such inspection shall be held in the presence of the parties, with 48 hours advance notice.
- b) The report of the inspection shall be prepared and supplied to the parties.
- c) The parties shall be at liberty to file their written objections to the report.
- d) A hearing shall be given in the proceedings to be drawn up accordingly to both the parties. The parties must also be allowed to make oral submissions as also adduce evidence in support of their contentions.
- e) 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.

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 four months from the date of communication of this order.

As no affidavit has been called for, allegations are deemed to have been denied.

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.)