

S/L 3

13.09.2021

Court. No. 19

 sn

WPA 14151 of 2021

Manju Agarwal & Ors.

Vs.

The Kolkata Municipal Corporation & Ors.

(Through Video Conference)

Mr. Ankit Agarwala

Mr. Dilip Kumar Mondal

...for the Petitioners.

Mr. Alok Kumar Ghosh

Ms. Manisha Nath

...for the KMC

Mr. Jahar Lal De

Mr. Jahar Datta

..for the State

Mr. Brajesh Jha

Mr. Saket Sharma

..for the intervenor

The writ petition has been filed by persons who do not take any responsibility for the unauthorized construction. The demolition proceeding was initiated on the basis of an order passed by this Court dated January 16, 2020. The demolition order has been challenged before this Court on the ground that the same suffers from non-application of mind and mis-appreciation of facts.

Reference has been made to the order impugned. Mohit Jindal & Ors. have been treated to be the persons responsible for the unauthorized construction and the husband of the petitioner no.1 Brij Mohan Beriwal has been treated as the complainant.

It is submitted that the petitioners are the owners of the portion, which Mohit Jindal and Others complained to be illegal and unauthorized. Accordingly, the writ petition

was filed by Mohit Jindal & ors being WPA 22410 of 2019 praying for directions upon the Kolkata Municipal Corporation to take steps in terms of the prayer (d) of the writ petition.

It further appears that on the prayers of Mohit Jindal and others, this Court disposed of the writ petition by directing the Kolkata Municipal Corporation and/or its men and agents to initiate a demolition proceeding in accordance with law by complying with prayer “d” of the writ petition.

Prayer (d) of the writ petition is quoted below:-

“ Issue a writ of and/or in the nature of Mandamus directing the respondent authorities concerned, particularly the respondent KMC authorities concerned, and/or their men, servants, agents and/or assigns to demolish illegal construction in the common area of premises no. 188/1H, Manicktolla Main Road, P.S. Phoolbagan, Kolkata 700054”

Mr. Ghosh, learned advocate for the KMC submits that the mistake in referring to the husband of the petitioner no.1 as the complainant was a typographical error and such mistake would not change the fate of the order.

Mr. Ghosh further submits that in view of the order passed in the contempt proceeding any protective order that may be passed in this proceeding would amount to interference with the decision of the learned Co-ordinate Bench.

The petitioners are correct to the extent that the Kolkata Municipal Corporation issued an order of demolition as also the notice under Section 544 and 546 of the Kolkata Municipal Corporation Act, 1980 treating the

complainants, that is, Mohit Jindal & Ors, as the persons responsible. The proceedings have been carried on treating the husband of the petitioner no.1 as the complainant. The situation was just the reverse. Although, this Court is of the opinion that the authority in exercise of its statutory power passed an order which suffers from non-application of mind and mis- appreciation of facts, yet this Court is not in a position to pass any protective order in favour of the petitioners or direct re-hearing as the petitioners were not treated as the persons responsible. The order of demolition is an appealable order. Moreover the coordinate bench had directed compliance of the order of demolition. The person responsible has neither preferred any appeal nor approached the Learned Co-ordinate Bench.

Moreover, the locus of the petitioners to maintain this application is also not accepted.

The aggrieved party must approach the appropriate forum or the Learned Co-ordinate Bench if permissible under the law.

This writ petition is disposed of.

However, there will be no order as to costs.

All parties are directed to act on the basis of the learned advocate's communication.

(Shampa Sarkar, J.)