

03.12.2021
Sl. No.8
srm

W.P.A. No. 18461 of 2021
Sk. Muktar Hossain & Ors.
Vs.
The State of West Bengal & Ors.

Mr. Partha Sarathi Deb Barman,
Md. Shakir,
Mr. Prosenjit Mukherje,
Mr. Arghya Kamal Das

...for the Petitioners.

Mr. Alok Kumar Ghosh,
Mr. Dwijadas Chakraborty

...for the KMC.

Mr. Jahar Lal De,
Mr. Shamim-ul-Bari

...for the State-respondents.

This matter was fixed today to enable the learned Advocate for the corporation to produce records to show that a demolition case had been initiated against the person responsible in respect of the premises in question, against which the impugned notice has been issued.

Mr. Deb Barman, learned Advocate appearing on behalf of the petitioners, had raised a question of jurisdiction of the learned Senior Municipal Magistrate in issuing an order of demolition, without the corporation having held that the said person was liable to demolish. Mr. Deb Barman relied on two judgements of this Court to show that there were divergent views and the matter has been referred to a larger bench.

To clarify the doubt, which had been created in the facts of the case, and to ascertain whether this matter would be covered by the decisions either way, the Court was of the opinion that if it is found from the records that a proceeding had been initiated against the person responsible which was concluded by issuance of an order of demolition, holding the person responsible liable to demolish, then the learned Senior Municipal Magistrate would have the jurisdiction to pass the order of demolition along with the order of conviction and fine. The remedy available to the petitioners would be to challenge the order of the learned Senior Municipal Magistrate before the appropriate forum in terms of the provisions of the Code of Criminal Procedure.

Mr. Ghosh, learned Advocate appearing on behalf of the Kolkata Municipal Corporation, has submitted an affidavit-in-opposition used in another public interest litigation. The said affidavit is a part of the records of the court. It appears that an order was passed by the Deputy Chief Engineer (Building), North as the Hearing Officer on August 31, 2016 in Demolition Case No.15-D/I/16017 in respect of the property in question. A notice for demolition under Sections 544 and 546 of the Kolkata Municipal Corporation Act, 1980 had been served upon the person responsible on May 8, 2017. The demolition had been fixed on May 24, 2017. The demolition could not be

effected and the matter went to the learned Senior Municipal Magistrate and the order was passed on March 27, 2019.

Mr. Ghosh further contends that the writ petition is not maintainable on another score as well. Apart from the existence of an alternative remedy, the order of the Senior Municipal Magistrate has also not been challenged. A notice of implementation of the order of the Magistrate issued by the corporation has been challenged. He further submits that the order has also been partially complied with as the petitioner has paid the fine. The petitioner has accepted the order.

Under such circumstances, as this is not a case where the learned Senior Municipal Magistrate had assumed the jurisdiction of the civic body, the writ petition cannot be entertained in its present form in view of the alternative remedy under the Code of Criminal Procedure. Leave is granted to the petitioners to approach the appropriate forum in accordance with law against the order of the learned Senior Municipal Magistrate within a period of three weeks from the date of communication of this order.

It is categorically directed that the certified copy of the order of the learned Senior Municipal Magistrate shall be supplied to the petitioners and/or the learned Advocate for the petitioners within one week from the date of applications by the appropriate authority.

With the above observations, the writ petition is disposed of.

There will be no order as to costs.

All parties are to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)