

ORDER SHEET

WPO/400/2020
IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
ORIGINAL SIDE

ANIL GHOSH
VS
THE KOLKATA MUNICIPAL CORPORATION & ORS.

BEFORE:
The Hon'ble JUSTICE AMRITA SINHA
Date: 6th April, 2021.

Appearance:
Mr. Sunny Nandy Adv.
Mr. Purnendu Maity, Adv.
Mr. Subha Pathak, Adv.
Mr. Tamal Singha Roy, Adv.
..for the Petitioner.

Mrs. Sipra Majumdar, Adv.
Mr. Sougata Mitra, Adv.
..for the State.

Mr. Ranajit Chatterjee, Adv.
Ms. Manisha Nath, Adv.
..for KMC.
Mr. Samrat Chowdhury, Adv.
Mr. Sandip Das, Adv.
..for Respondent no.13.

The Court:- The matter relates to premises no. 26/1P, Prasanna Kumar Tagore Street, Ward No. 24, Kolkata- 700006. The building in question is a heritage-Grade-IIA property.

The grievance of the petitioner is that the owner of the heritage property was making constructions and changing the nature and character of the property in the garb of repairing the same. According to the petitioner, the architectural style of the property in question has been changed.

Pursuant to the direction of this Court, Officers of the Kolkata Municipal Corporation have made a fresh inspection of the property and have prepared a report wherefrom it appears that in the first floor there is no change in the floor of

room as well as the passage. Only plastering, painting and putty work at inside wall and doors, windows are painted. In front of passage, above the railing there is aluminium frame with glass windows which has been newly provided. In the second floor there is no change in the floor of the room. The floor of the passage is converted to tiles floor. In front of passage, above the railing there is aluminium frame with glass windows which have been newly provided. It has been mentioned that the work is going on without the approval of the Heritage Conservation Committee.

Learned advocate appearing on behalf of the private respondent submits that an application was made before the Director General, Environment and Heritage Department on 9th December, 2020 seeking permission for repairing of the premises in question. An application praying for permission to repair was also filed before the Executive Engineer (Building) Borough-IV, Kolkata Municipal Corporation.

The private respondent relies upon Rule 3(2)(d) of the Kolkata Municipal Corporation Building Rules, 2009 wherein it has been mentioned that no building permit shall be required for reflooring of the surface of an existing floor.

It has been submitted by the private respondent that the previous existing floor was completely damaged and for the purpose of preservation of the heritage property the reflooring was required to be done. As regards fixing up of the aluminium frame with glass windows, it has been submitted that the same was required to be put up to prevent rain water from seeping inside the veranda and rooms of the premises.

According to provision 425E, the Heritage Conservation Committee has the power to function for the purpose of preservation, conservation and maintenance

of heritage buildings. It further lays down that for erection or re-erection in a heritage building or part thereof, or for restoration of any heritage building to its old shape, design or beauty in the case of unlawful demolition, or to make any change of internal or external wall, floor, interior or exterior architectural floor or skyline or for any other change of a heritage building, the provisions of chapters XXII and XXIII of the Act and the rules made there under shall apply *mutatis mutandis*.

As per the aforesaid provision, the private respondent duly applied before the Director General, Environment and Heritage Department praying for necessary permission for repairing the damaged portion of the heritage property and as there is no requirement for obtaining building permit for reflooring of an existing floor accordingly, the private respondent proceeded with reflooring the veranda.

As regards fixing up of aluminium frame with glass windows the Officers of the Kolkata Municipal Corporation shall take a decision whether the same is contrary to the provision of law.

The writ petition is accordingly disposed of by directing the respondent no.6, the Chairman, Heritage Conservation Committee to take a decision with regard to the fixing up of the aluminium frame with glass windows by the private respondent in the heritage property.

The aforesaid respondent shall afford an opportunity of hearing to the private respondent prior to taking any decision in the matter.

The report prepared by the Special Assistant Engineer (C) E & H dated 1st April, 2021 is retained with the record.

WPO 400 of 2020 is disposed of.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties upon completion of usual legal formalities.

(AMRITA SINHA, J.)

nm