

8.2.2022
Ct. No.19
Sl.no.17
sn

W.P.A. No. 419 of 2022

Pradip Dhara @ Babua

Vs.

The Kolkata Municipal Commission & Ors.

Mr. Debabrata Sarkar
Mr. Mrinal Kanti Maity
....for the petitioner
Mr. Moloy Singh
Ms. Neelam Singh
..for the State
Mr. Achin Jana
Mr.Suman Chakraborty
Mr. Prosenjit Ghosh
..for the respdts.8-9
Mr. Subhrangsu Panda
Ms. Ira Bhattacharyya
..for the KMC

Let the affidavit of service is taken on record.

The petitioner has alleged that the respondent nos.8&9 have raised certain construction without proper permission from the Kolkata Municipal Corporation. According to the petitioner, the said construction is being carried on at premises no. 128, Narayan Roy Road, Mouza Paschim Barisha, under Ward No 126 of the Kolkata Municipal Corporation

It is the contention of the petitioner that a G+4 storeyed building has been constructed in violation of the sanction plan and also the building rules. Mandatory open space has not been maintained and the extension of cantilever has obstructed the easementary rights of the petitioner. A complaint was filed before the competent

authority of the Corporation by a letter dated December 6, 2021.

Mr. Jana, learned advocate appearing on behalf of the respondent nos. 8&9 submits that the said respondents have not violated the rules and the construction has been made in accordance with the plan with very minor deviation. It is further submitted that the Kolkata Municipal Corporation made a preliminary inspection and issued a stop work notice. The said respondents have complied with the stop work notice. He further submits that after receiving the notice, further construction has been stopped and a prayer for regularization has been made.

Mr. Panda, learned advocate for the KMC also submits that the Corporation has taken steps under the law, on receipt of the complaint of the petitioner.

Having considered the rival contentions of the parties, this Court is of the opinion that as the KMC has already taken steps in this regard and necessary stop work notice has been issued, nothing remains to be decided further. The entire matter is relegated to the Corporation to initiate proceeding as per law.

While disposing of the issues involved, the Corporation shall adhere to the following procedure:-

- a) An inspection of the site shall be conducted. Such inspection shall be held in the presence of the parties, within three weeks. Advance notice of the inspection shall be served upon the petitioners and

the respondent nos.8&9. If the parties are not available to accept notice, the authorities shall affix the notice of hearing and inspection at conspicuous places in their respective premises.

b) In case, it is found on preliminary inspection that there may be reasons to believe that the construction was without permission and was continuing, the authorities may take such interim measures by stopping such construction.

c) The report of such inspection shall be prepared along with the sketch map, indicating the extent and nature of unauthorized construction, if any.

d) Such report shall be handed over to the petitioner as also the respondent nos.8&9.

e) A hearing shall be given to the petitioners and the respondent nos.8&9. The parties must also be allowed to furnish their written objection/version to the said report and adduce oral and documentary evidence in support of their contentions before the competent authority.

f) 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 in terms of the statute. The court has not gone into the merits of the claims and the issues involved shall be decided independently.

g) The question of title, encroachment etc. shall not be gone into by the KMC.

h) This Court directs that while disposing of the issues, all documents, plans and applications which have already been filed by the respondent no. 8&9 shall be disposed of simultaneously.

The entire exercise shall be completed within a period of four months from the date of communication of this order

This 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.)