

S/L 13
09.02.2022
Court. No. 19
GB

W.P.A. 675 of 2022

Smt. Bratati Bera
VS
Midnapur Municipality & Ors.

*Mr. Biswaroop Bhattacharya,
Ms. Soumita Ghosh.*

...for the Petitioner.

Mr. Zohaib Rauf.

...for the Respondent No.4.

Ms. Ahana Sikdar.

...for the Midnapur Municipality.

Affidavit-of-service filed in Court today be kept with the record.

The petitioner has alleged unauthorized construction of a multi-storeyed commercial cum residential building at Nimtala Chawk, Ward No.15, Mouza-Bibigunj, at L.R. Plot Nos.243, 246 and 247.

It is the specific contention of the petitioner that the sanction plan has been issued in contravention to the rules. Further that a part of the construction was raised by the respondent no.4 without sanction and a part was constructed, in violation of the sanction plan. The specific allegation is that the sanction was granted for a G+4 storied building, whereas a G+7 storeyed building had been constructed, illegally.

Mr. Rauf, learned advocate appearing on behalf of the respondent no.4 submits that a revised plan has been filed with the authorities and the authorities may be directed to

dispose of the revised plan with regard to the other floors which have been constructed. Reliance has been placed on a decision of this Court in the matter of ***Saif Impex Pvt. Ltd. versus Kolkata Municipal Corporation*** reported in ***2014 SCC OnLine Cal 16044***. The relevant portion of the judgment is quoted below:

“Having regard to the fact that there is nothing on record to show the existence of immediate threat to public safety, I feel that the Municipal authority need not resort to the provision contained in sub-section 8 of Section 400 of the Kolkata Municipal Corporation Act for immediate demolition of the construction made on the 6th floor of the said building, particularly in view of the fact that the petitioner’s application for sanction of the revised plan for regularising 6th floor construction in the said building is still awaiting consideration before the Municipal authority.

Accordingly, this court disposes of the writ petition by directing the Municipal authority to proceed under Section 400(1) of the Kolkata Municipal Corporation Act instead of proceeding under sub-section 8 of Section 400 of the Kolkata Municipal Corporation Act in respect of the unauthorised construction which was made by the petitioner in deviation from the sanctioned plan. While doing so the Municipal authority will first consider the petitioner’s application for sanction of revised plan and thereafter take the ultimate decision regarding demolition of the unauthorized construction allegedly made by the petitioner in the said building in deviation from the sanctioned plan, provided such unauthorized construction cannot be retained as per the Building Rules framed under the Kolkata Municipal Corporation Act, 1980.”

This Court is of the opinion that the petitioner should avail of the provisions of Section 217 of the West Bengal Municipal Act, 1993 with regard to the allegation that the plan has been obtained from the municipal authorities upon practising fraud and material misrepresentation. This court cannot decide the said issue.

With regard to the complaint of the petitioner regarding unauthorized construction, this Court directs that the complaint of the petitioner as also the application of the respondent no.4 with regard to the revised plan shall be disposed of simultaneously and in accordance with law. Inspection of the premises in question shall be made in the presence of the parties. A report of the inspection shall be supplied to the parties. The parties shall be at liberty to proceed on the basis of such report and file their written objections/versions to the same. Thereafter, a hearing shall be given to the parties and a reasoned order shall be passed and communicated to all concerned. The merits of the claims and counter-claims of the parties are not to be decided by this Court and the authorities shall decide the entire issue fairly, independently and in accordance with law.

As it is specifically submitted by Mr. Rauf that his clients are not continuing with the construction, this Court does not pass any order of injunction. However, it is for the municipality to ensure that no unauthorized construction takes place until the disposal of the proceeding upon deciding all the issues, including the question whether under the facts and circumstances and as per the law, the revised plan of the respondent no.4 could be accorded sanction or not.

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

Accordingly, the writ petition is disposed of.

There will be however no order as to costs.

All parties are directed to act on the basis of server copy of this order and the learned advocate's communication.

(Shampa Sarkar, J.)