

03.03.2022
Court No. 19
Item no.06
CP

WPA 870 of 2022

Kumkum Mali
Vs.
The Kolkata Municipal Corporation & ors.

Syed Ehtesham Huda
Md. Zeeshan Uddin
Ms. Amrin Khatoun

.....for the petitioner.

Mr. Subhrangsu Panda
Ms. Ina Bhattacharyya

....for the K.M.C.

Mr. Jahar Dutta
Mr. Bipin Ghosh

.....for the State.

Mr. R. Das
Mr. Hitoban Sarkar

....for the respondent nos. 4 & 5.

The reason for interference with the order of demolition passed by the Executive Engineer (Civil)/Building, Borough Nos. IV & V, Kolkata Municipal Corporation, dated January 7, 2022, is violation of the principles of natural justice. The show cause issued and the order impugned both indicate the nature and extent of the unauthorized construction. Admittedly, the order was passed without hearing the petitioner.

It is the contention of the petitioner that the petitioner was before the authority, but the authority refused to record the submissions of the petitioner.

The petitioner insists that the attendance register and CCTV footages would show the appearance of the petitioner.

On the contrary, the learned advocate appearing on behalf of the Kolkata Municipal Corporation (hereinafter referred to as 'the corporation'), submits that the petitioner failed to appear before the authority and she also did not pray for an adjournment of the hearing on the relevant date.

These are disputed questions of fact. Yet, the conviction with which the petitioner insists that the CCTV footages and the attendance register would indicate the attendance of the petitioner, persuades this court to come to a conclusion that even if the petitioner was not in a position to make submissions before the authority on the particular day, an adjournment should have been given by the authorities. The order should not have been passed on the first day.

Instead of calling for affidavits and prolonging the matter, the court disposes of the same. The court is of the opinion that the matter must be relegated to the corporation for a hearing, de novo.

The order of demolition is set aside.

Without going into the other formalities of issuance of notice, this court fixes the date of hearing

by the Executive Engineer (Civil)/Building, Borough No. IV & V on March 28, 2022 at 12 noon.

The order of this court will be notice to all the parties. All the parties will attend the hearing on that day with all supporting documents. The parties would be entitled to be represented by their learned advocates.

On the basis of the records and upon hearing all the parties, a reasoned order will be passed by the competent authority of the corporation, in accordance with law. The order shall be communicated and steps shall be taken by the corporation in accordance with law.

This court has not gone into the merits of the findings as it is the corporation which has been vested with the power to act and proceed as per law, upon detection of unauthorized construction.

The entire exercise shall be completed within a month from the first date of hearing as fixed by this court. No unnecessary adjournments shall be given to any of the parties.

The 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.)