

17.05.2022
Court No. 19
Item no.06
CP

WPA No. 1395 of 2022

Md. Shahabuddin & ors.
Vs.
Kolkata Municipal Corporation & Ors.

Mr. S. R. Saha

....for the petitioners.

Mr. R. Chatterjee
Mr. Arijit Dey

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

Mr. Lalit Mohan Mahata, Ld, Addl. Govt. Pleader
Mr. P.B. Mahata

.....for the State.

Mr. Arijit Dey, learned advocate appearing on behalf of the Kolkata Municipal Corporation (hereinafter referred to as 'the corporation'), has filed a report from which it appears that the concerned department of the corporation caused an inspection of the Premises No. 38, Rabindra Sarani, Ward No. 43, Borough – V, Kolkata and found that one Md. Firoz and others had constructed a R.C.C. slab and brick walls at portions of 2nd floor and 3rd floor of an existing dilapidated four storeyed building. Upon enquiry the persons responsible at the premises failed to produce any documents to validate such construction. A 'stop work' notice under Section 401

of the Kolkata Municipal Corporation Act was served upon the persons responsible who were found at the spot. Intimation to the police authorities was also given by the corporation and an FIR under Section 401A of the KMC Act, 1980 was lodged at Bowbazar Police Station. The said report is taken on record.

The allegation of the petitioners in the writ petition is that respondent nos. 6 and 7 have constructed illegally at Premises No. 38, Rabindra Sarani, Kolkata. As the respondent nos. 6 and 7 had allegedly avoided service, the department was directed to send the order dated May 4, 2022 to the Officer-in-Charge, Bowbazar Police Station for intimation to the respondent nos. 6 and 7.

Mr. Mahata, learned Additional Government Pleader, has submitted a report from the Officer-in-Charge, Bowbazar Police Station, from which it appears that the police authorities had served a copy of the order of this court dated May 4, 2022 upon the respondent nos. 6 and 7. Despite such service, none appears on behalf of the said respondents. The report is taken on record.

However, this court is of the opinion that the writ petition can be disposed of on the preliminary findings of the corporation to the effect that unauthorized construction had been detected at Premises No. 38, Rabindra Sarani, Ward No. 43,

Borough – V, Kolkata. A ‘stop work’ notice in respect of the said construction has been issued. Further, the police has been intimated accordingly. Although according to the corporation the persons responsible who were found at the spot on local enquiry are not respondent nos. 6 and 7, yet, it is the specific contention of the petitioners that the said respondents are also connected to such construction.

The writ petition is disposed of in the absence of the respondent nos. 6 and 7 who have chosen not to appear. As this court is of the view that all the parties including the respondent nos. 6 and 7 and other persons found to be responsible for such construction shall be heard by the corporation, and the court is not deciding on merits, the matter can be disposed of in their absence.

Under such circumstances, the competent authority of the corporation is directed to dispose of the representation dated October 2, 2021, made by the petitioners through their learned advocate by adopting the following procedure:

- a) Inspection of the construction shall be conducted in the presence of the petitioners, the respondent nos. 6 and 7 and other interested parties and persons responsible, with 48 hours advance notice to the parties. If the parties are not

available to accept notice, the same shall be affixed at a conspicuous place in the respective premises.

- b) During inspection, if any further construction is detected in violation of the rules, then the corporation can take interim measures.
- c) Reports shall be prepared and handed over to the petitioners and the respondent nos. 6 and 7.
- d) Thereafter, a hearing shall be given to the petitioners, the persons responsible, the respondent nos. 6 and 7 and all other and all other interested parties. The parties must also be allowed to furnish their written objection/version to the said reports and adduce oral and documentary evidence in support of their contentions, before the competent authority.
- e) 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 with regard to the constructions.

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

The court has not gone into the merits of the claims and counter-claims of the parties and the issues shall be decided independently.

The question of title, possession and boundary dispute etc. shall not be decided by the corporation. The only question to be decided by the corporation would be whether the construction has been made without any permission and/or in violation of the building rules or in deviation of the sanction plan.

Accordingly, the writ petition is disposed of.

However, there will be no order as to costs.

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

(Shampa Sarkar, J.)