

31.03.2022

Sl. No. 17

ss

W.P.A. 1666 of 2022

Eastern Heights Flat Owners Welfare Association & anr.

Vs.

The Kolkata Municipal Corporation & ors.

Mr. Avijit Dey
Mr. Biswaroop Mukherjee
... for the petitioners

Mr. Wasim Ahmed
Sk. Md. Masud
... for the State

Mr. Srijan Nayek
Mr. Purnasis Bhuniya
... for the K.M.C.

Affidavit of service filed in Court is taken on record.

It appears that the postal authorities made several attempts to deliver the postal articles containing a copy of the writ petition upon the respondent nos.8 to 13 on several occasions, but the door was closed. Intimation was given, but the articles were not claimed. The postal articles containing the notices that the matter would be mentioned for hearing before this Court, have also come back with similar endorsement:- 'door closed, intimation served, unclaimed'.

The respondents, who are residing in premises No.54C, Christopher Road Kolkata-700046, have avoided service. All the postal articles have come back with the aforementioned endorsement. They are taken on record.

The petitioners have alleged that an unauthorised construction is going on at premises No.54C, Christopher Road under Ward No.59, Borough-VII, within the jurisdiction of Kolkata Municipal Corporation.

The petitioner no.1 is an association of flat owners residing at premises No.50, Christopher Road, Kolkata-700046. The premises owned and occupied by the petitioners is adjacent to the premises on which the alleged unauthorised construction is going on.

Learned Advocate appearing on behalf of the Corporation submits that steps shall be taken in accordance with law, on the basis of the complaint of the petitioners.

Under such circumstances, this court is not inclined to pass any mandatory orders in the absence of the respondent nos.8 to 13 with regard to such unauthorised construction.

This Court relegates the entire matter to the Corporation to act and proceed in accordance with law, upon granting adequate opportunity to the respondent nos.8 to 13 and/or their representatives to participate in the proceeding during the stage of inspection and also at the hearing.

Under such circumstances, the writ petition is disposed of with a direction upon the Corporation to decide the issue of unauthorised construction as raised by the petitioners by adopting the following procedure:-

- a) An inspection of the premises shall be conducted.

Such inspection shall be held in the presence of the petitioners and the respondent nos.8 and 13, within three weeks. Advance notice of the inspection shall be served upon the petitioners and the respondent nos.8 to 13. If the parties are not available to accept notice, the authorities shall affix the notices 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 interim measures by stopping such construction.
- c) A 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 parties.
- e) A hearing shall be given to the petitioners and the respondent nos.8 to 13. 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. All points raised by the parties shall be decided. All documents filed by the parties, if any, shall be exchanged.
- 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 counter-claims of the parties and the issues involved shall be decided independently. The question of title and boundary dispute shall not be decided.

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

However, there will be no order as to costs.

All the parties are directed to act on the basis of the learned advocate's communication.

(Shampa Sarkar, J.)