

S/L 21
10.3.2022
Court. No. 19
sn

W.P.A. 2085 of 2022

Shakti Kulthia & Ors.

VS

The Kolkata Municipal Corporation & Ors.

Mr. Tanmay Mukherjee

Mr. Amal Kr. Saha

Mr. Iresh Paul

Mr. Sourik Das

Mr. Rudranil Das ... *for the Petitioners*

Mr. Srijan Nayak

Ms. Rituparna Maitra

..*for the KMC*

Mr. Narayan Chandra Bhattacharyya

Mr. Surajit Ghosh

..*for the State*

The petitioners allege that the stop work notice issued by the Kolkata Municipal Corporation suffered from incorrect appreciation of facts and non-application of mind. It is further alleged that the notice has been issued without considering the provisions of Rule 3(2)(a)(c)(d) of the Kolkata Municipal Corporation Building Rules, 2009.

The learned advocate for the petitioners submits that permission from the Corporation was not necessary in case of such repairs.

The concerned repair works have been going on in the second floor of premises no. 37, Amar Basu Sarani, Kolkata 700 007, Police Station Girish Park, under Borough IV, Ward No. 25 of Kolkata Municipal Corporation.

The police authorities have filed a report. The same is kept on record. It appears from the report that the police authorities had intimated the Director General, Building, Kolkata Municipal Corporation, that the notice under Section 401 of the Kolkata Municipal Corporation Act, 1980 had been served upon the petitioners, on January 27, 2022.

On perusal of the stop work notice, it appears that the petitioners have been asked to stop all constructional work including addition and alteration. Whereas, a report filed by the Corporation today, indicates that some brick work has been made in the bathroom and the balcony and two iron joints have been fixed on the second floor roof level without ascertaining the stability of the said building. There seems to be contradictions in the stop work notice and the report filed by the Corporation. This Court is of the opinion that the dispute cannot be resolved, unless inspection of the site is held in the presence of the petitioners. It is up to the petitioners to satisfy the Corporation authorities that the construction has been done in terms of the provisions of Rule 3(2)(a)(c)(d) of the Kolkata Municipal Corporation Building Rules, 2009.

The disputes raised hereinabove are factual and as such cannot be resolved without holding a physical inspection.

Under such circumstances, this writ petition is disposed of with a direction upon the competent authority of the Kolkata Municipal Corporation to cause an inspection of the premises in question, in the presence of the petitioners within two weeks from date, upon issuing prior notice to the petitioners. A report shall be prepared and handed over to the petitioners. A hearing shall be granted to the petitioners. The petitioners shall be entitled to file their written objections/versions and all supporting documents at the time of hearing. A reasoned order shall be passed and communicated to the petitioners in accordance with law, within three weeks from the receipt of the written statements/written versions. The constructions shall abide by the final decision of the authority.

This writ petition is thus disposed of.

There will be, however, no order as to costs.

All parties are directed to act server copy of this order or learned advocate's communication.

(Shampa Sarkar, J.)