

12.4.2022  
Court No. 19  
Item No. 7  
sn

WPA 4448 of 2021

Madhai Paul  
Vs.  
The State of West Bengal & Ors.

Mr. Aniruddha Sarkar  
Mr. Rameshwar Sinha  
Ms. Mamata Mitra  
...for the petitioner

Mr. Sanjib Mitra  
Mr. Asim Hati  
Ms. Nandini Sharma ..for the respdt.6

Mr. S. Panda  
Ms. Rima Das ..for the KMC

The petitioner has alleged that the respondent no.6 has made some unauthorized construction at holding no. 8A/1 and 8B, Satchashipara Road. It is alleged that the Kolkata Municipal Corporation has neither acted on the complaint filed by the petitioner nor has the Corporation informed the petitioner, whether any sanction had been granted in respect of the construction in question. Hence, the interference of the Court, is sought for.

The Kolkata Municipal Corporation has filed a short report. The same is taken on record. It appears that the Assistant Engineer (C), Building Department, Borough-I has found a construction of CI shed structure supported by brick walls and tubular iron structures covering an open terrace on

the 2<sup>nd</sup> floor. A stop work notice has been issued. The matter has been referred to the authorities, and, since then, the matter is pending before the Special Officer (Building) for hearing.

The learned advocate for the respondent no.6 submits that the construction which has been made, is not permanent in nature. There are minor deviations. It is further submitted that the interior work which was going on, was permissible under Rule 3(b) of the Kolkata Municipal Corporation Building Rules.

Be that as it may, as the Corporation has found some unauthorized construction and has already issued a show cause notice, this Court is of the view that the entire issue must be decided in accordance with law.

Under such circumstances, this writ petition is disposed of with a direction upon the competent authority of the Kolkata Municipal Corporation to act and proceed in accordance with law and reach the questions raised in this writ petition, to its logical conclusion.

While doing so, the Corporation shall adhere to the following procedure:-

a) An inspection of the premises shall be conducted. Such inspection shall be held in the presence of the petitioner and the respondent

no.6 and all other interested parties. Advance notice of the inspection shall be served upon the petitioner and the respondent no.6. 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 such interim measures by stopping such construction.

c) The 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 petitioner and the respondent no.6. 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 documents relied upon by the respective parties 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.

g) The prayer for regularization, if made by the person responsible, shall also be considered in accordance with law. However, such liberty shall not be construed as an observation that the respondent no.6 has allowed getting his construction regularized. Such issue shall also be decided in accordance with the provisions of law and the rules governing the field.

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

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 learned advocate's communication.

**(Shampa Sarkar, J.)**