

S/L 5
17.03.2022
Court. No. 19
GB

W.P.A. 3767 of 2022

Ashok Kumar Shaw
VS
The State of West Bengal & Ors.

*Mr. Rachit Lakmani,
Md. Tarique Masood,
Mr. Mostafijur Rahaman.*

...for the Petitioner.

*Mr. Bibekjyoti Basu,
Mr. Somraj Dhar.*

...for the State.

*Mr. Srijan Nayak,
Mr. Subrata Sikdar.*

...for the K.M.C.

Mr. Prabir Maji.

...for the Respondent Nos.9 & 11.

This application has been filed by the person responsible for some unauthorized construction, challenging a demolition order passed by the Executive Engineering (Civil) Building Department, Borough-IX, Kolkata Municipal Corporation dated September 4, 2021.

The contentions of the petitioner are as follows:-

- a) That the order was passed without granting proper hearing to the petitioner and without considering an application filed for retention/regularisation of some minor deviations.
- b) That on the date of hearing, the petitioner was informed that the hearing would be postponed, accordingly, the petitioner left the office of the concerned authority. Suddenly, the order was

passed without further notice of hearing to the petitioner.

- c) That the order was communicated sometime in February 2022, although passed on September 4, 2021.
- d) That no sketch map has been attached to the said order, from which the petitioner would be apprised as to the nature and extent of the alleged deviation or irregularity.

It appears that the order was passed noting that a hearing was given to the petitioner. However, it does not reflect from the order that any of the submissions made by the petitioner was considered or whether the application for retention had been accepted or not. Although, the order records that the petitioner and his learned advocate could not produce any valid documents with regard to the said encroachment onto the open spaces, however, the Court does not find any reflection from the order as to the nature and extent of the encroachment and also the nature and extent of the deviation in the building.

Thus, this Court is of the opinion that the report of the inspection which was held by the Corporation and the records which were available in the database of the Corporation were not before the petitioner. The petitioner did not get an opportunity to deal with those issues, at the hearing. Undoubtedly, the Corporation is the sole authority to proceed against unauthorized constructions and demolish the same in accordance with law. It is also not in doubt that

rampant unauthorized constructions are going on and the civic body is bound by law to demolish such irregular and unauthorized constructions which would otherwise create a heavy burden on the civic amenities of the city. However, as a party is being deprived of his property, even though in accordance with law, the Court is of the view that the party must be apprised about the nature and extent of the unauthorized constructions and also should be allowed to submit in details with supporting documents, before the concerned authority.

For these reasons, the order impugned dated September 4, 2021 is set aside.

This Court is of the view that it would be beneficial for the parties and it would sub-serve the principles of justice, equity and fair play, if the Court itself fixes the date here and now. The order of the Court shall be treated to be notice to all.

Thus, this Court directs the Corporation to proceed afresh in accordance with law and dispose of the entire issue in the following manner:-

a) An inspection of the premises situated at 2C/1A Ashu Babu Lane, Ward No.76, Borough-IX, Police Station-Watgunge, shall be conducted. Such inspection shall be held in the presence of the petitioner and the respondent nos.9 and 11, by the competent authority of the Kolkata Municipal Corporation on April 7, 2022 at 11 a.m. All interested parties are to remain at the site. No further notice will be given by the Corporation.

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) On May 6, 2022 hearing will be held. On the date of hearing the petitioner and the respondent nos.9 and 11 must 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 either party, shall be decided.

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 and the demolition, which has been initiated, shall be disposed of according to this order. The application of the petitioner for retention/regularization shall also be disposed of simultaneously.

However, this Court has not gone into the merits of the claims and counter-claims of the parties and this order shall not be construed as a direction for regularization. The entire

exercise shall be completed immediately thereafter, preferably within June 6, 2022.

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.)