

S/L 8
14.03.2022
Court. No. 19
GB

W.P.A. 3902 of 2022

Sthapati Enterprises Pvt. Ltd. & Anr.
VS
The Kolkata Municipal Corporation & Ors.

*Mr. Subhrangsu Panda,
Ms. Mithu Singha Mahapatra,
Mr. Anindya Chatterjee.*

...for the Petitioners.

*Mr. Jaharlal De,
Mr. Benazir Ahmed.*

...for the State.

*Ms. Koyeli Bhattacharyya,
Ms. Ina Bhattacharyya.*

...for the K.M.C.

*Mr. K.D. Podder,
Mr. Subir Sabud.*

...for the Respondent No.5.

The petitioners are aggrieved by a portion of the order of the Executive Engineer (Civil) Building Department, Borough-I, Kolkata Municipal Corporation dated December 21, 2021.

It is the contention of the petitioners that the conditional permission given to the petitioners to construct on Premises No.14A, Mahatma Sisir Kumar Sarani, Ward No.007, Borough-I has caused irreparable loss to the petitioners in view of the fact that the respondent no.5 has intentionally prevented the petitioners from complying with portion of the order, which is quoted below:-

“After completion of the repairing and restoration work the petitioner shall certify in writing about his satisfaction duly counter signed by both the Structural Engineer with

stamp and handed over to the respondent with a legible copy to be submitted before the undersigned.”

The petitioners submit that such resistance by the respondent no.5 was only with the *mala fide* intention to prevent the petitioners from continuing with the construction in terms of the order of the Executive Engineer (Civil) Building Department, Borough-I, Kolkata Municipal Corporation.

The Executive Engineer (Civil) Building Department, Borough-I, Kolkata Municipal Corporation had passed the order pursuant to the direction of this Court in a writ petition filed by the respondent no.5. The allegation was that the construction of the petitioners had caused substantial damage to the adjoining premises belonging to the respondent no.5. Thus, this Court had directed the Executive Engineer (Civil) Building Department, Borough-I, Kolkata Municipal Corporation to look into the matter and consider the grievances upon holding an inspection. Pursuant to the direction of this Court, the order has been passed, which is impugned before this Court.

The order of the Executive Engineer (Civil) Building Department, Borough-I, Kolkata Municipal Corporation is a reasoned one and an opportunity had been given to the petitioners to repair and restore the damaged portions caused to the premises of the respondent no.5 in the presence of structural engineers of both parties. A certificate of such compliance was directed to be filed before the Executive Engineer (Civil) Building Department, Borough-I,

Kolkata Municipal Corporation and only thereafter, the petitioners were permitted to continue with the construction.

It is the contention of the petitioners that such conditional order has emboldened the respondent no.5, who has now resisted any kind of repair work proposed to be done by the petitioners with the help of the structural engineer.

Mr. Podder, learned advocate appearing on behalf of the respondent no.5 denies the contentions of the petitioners. He submits that his client along with a structural engineer was also present and a joint inspection was held on March 11, 2022. According to Mr. Podder, the petitioners are not interested to repair and restore the damaged portions of the premises.

Under such circumstances, the writ petition is disposed of with a direction upon the parties to cooperate with each other and complete the restoration and repairing work as directed by the Executive Engineer (Civil) Building Department, Borough-I, Kolkata Municipal Corporation within a period of ten days from date. An independent structural engineer of the Corporation shall be deployed by the Corporation during such inspection and repairing works. The said structural engineer, who shall be deployed by the Corporation for this purpose, shall also file a report before the Executive Engineer (Civil) Building Department, Borough-I, Kolkata Municipal Corporation indicating whether there has been resistance from any side or the parties have cooperated to get the job done. His fees shall be

paid by the petitioners. The order of the Executive Engineer (Civil) Building Department remains unaltered and is not interfered with.

If the petitioners satisfy the Executive Engineer (Civil) Building Department, Borough-I, Kolkata Municipal Corporation about the compliance as per the order dated December 21, 2021, the petitioners shall be allowed to complete the construction in accordance with law.

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 advocates' communication.

(Shampa Sarkar, J.)