

S/L 7
17.03.2022
Court. No. 19
GB

W.P.A. 4622 of 2022

Bimal Sharma
VS
The State of West Bengal & Ors.

*Mr. Prabir Maji,
Md. Tarique Masood,
Mr. Mostafijur Rahaman.*

...for the Petitioner.

Mr. Wasim Ahmed.

...for the State.

*Mr. Barin Banerjee,
Mrs. Sima Chakraborty.*

...for the K.M.C.

The petitioner is aggrieved by an order of demolition dated September 11, 2021. It appears that the petitioner was asked to demolish the said structure within seven days from the date of service of the order, failing which, the Corporation would proceed to deal with the unauthorized portions, in accordance with law.

It appears that the petitioner had approached the appellate tribunal and deposited the fees of appeal. It is alleged that the appellate tribunal did not accept the memorandum of appeal and the connected applications on the ground that certified copy of the order of demolition was not filed before the appellate authority and the demolition case No. was not mentioned in the order.

The petitioner has now approached the Court having no other alternative, There is no appeal in the eye of law. The demolition case number has not been mentioned. The order of demolition has been passed without any case number.

Whether at all a demolition case had been initiated is also not before the court.. The learned advocate for the Corporation cannot apprise the Court as to why the said demolition case number was missing in the order.

Thus, this Court is of the opinion that the order suffers from irregularity and should be set aside on this ground alone. It also appears that the inspection was held by the Corporation, in the absence of the petitioner. A proper opportunity of hearing was also not granted. The petitioner was not apprised of the nature and extent of unauthorized construction at the time of such inspection. The order, of course, reflects some unauthorized construction, however, this Court is of the opinion that a further inspection would be necessary and the contentions of the petitioner must also be taken into account before an order is passed. The order is also vague and cryptic, and is thus, set aside.

This Court is of the view that it would be beneficial for the parties and it would prevent unnecessary delay, if the Court itself fixes the date here and now. The order of the Court shall be treated as notice to all.

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

- a) An inspection of the premises situated at 14B, Nazir Lane, Ward No.76, Borough-IX, Police Station – Watganuge, shall be conducted. Such inspection shall be held in the presence of all the parties, by the competent authority of the Kolkata Municipal Corporation on April

11, 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 10, 2022 a hearing will be held. On the date of hearing all the parties 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 case which has been initiated, shall be disposed of according to this order. The application of the petitioner for retention/regularization if any, shall also be disposed of simultaneously, but strictly in accordance with law.

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, but not later than June 10, 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.)