

19.5 2022
Court No. 19
Item no.15
sn

WPA 5641 of 2022

Tuhin Mukherjee

Vs.

The Kolkata Municipal Corporation &

Ors.

Mr. Arik Banerjee
Mr. S. Nayak
Mr. Sumit Biswas
Ms. Rajashree Bhowmickfor the petitioner

Mr. Srijan Nayak
Ms. Sabnam De ..for the KMC

Mr.S. Bhattacharyya
Mr.C.N.Sarkar
Mr. S. Mondal ..for the respdts.7&8

Let the affidavit-of-service be taken on record.

This writ petition has been filed alleging inaction on the part of the Kolkata Municipal Corporation in taking steps despite complaints with regard to alleged unauthorised construction by the respondent nos. 7&8 on the premises situated at 439, Kalikapur Road, Kolkata 700 099.

It is submitted that the petitioner and the respondent nos.7&8 are the residents of the apartment mentioned hereinabove and have been enjoying their respective portions.

Mr. Bhattacharyya, learned advocate for the respondent nos.7&8 submits that no construction has been made by the said respondents. The writ

petition is a counter blast to the suit for recovery of the possession, filed by the said respondents against the petitioner.

Mr. Nayak, learned advocate for the KMC has submitted a short report from which it appears that construction beyond the sanction plan have been detected. Such report is taken on record.

The records reveal that the petitioner has already approached the Corporation by filing a complaint through his learned advocate being Annexure P/6 to the writ petition. Such complaint was filed on February 26, 2022. A plan has been annexed to the complaint which has allegedly been prepared by an empanelled engineer of the KMC.

This writ petition is disposed of with a direction upon the competent authority of the Kolkata Municipal Corporation to act and proceed on the basis of the complaint dated February 26, 2022, in accordance with law, upon taking into consideration all relevant documents. While doing so, the competent authority of 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 nos.7&8 and all other interested parties. Advance notice of the inspection shall be served upon the

petitioner, the respondent nos. 7 & 8 and other interested parties. 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 nos. 7 & 8. 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. The question of title, boundary dispute etc. shall not be decided by the Corporation.

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.)