

13.04.2022

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W.P.A. 6632 of 2022

Saswati Banerjee & ors.

Vs.

The Kolkata Municipal Corporation & ors.

Mr. Sudarsan Haldar

Mr. Kushal Chatterjee

... for the petitioners

Mr. Debjit Mukherjee

Ms. Dipanwita Ganguly

... for the K.M.C.

The petitioners have challenged the communication dated April 5, 2022, which has been issued by the Assistant Engineer, Ward No.89, Borough X of the Kolkata Municipal Corporation.

The petitioners submit that the letter was an order of demolition, issued without granting an opportunity of hearing to the petitioners. No inspection was made in presence of the petitioners. The nature and extent of the unauthorised construction has not been demarcated.

Reliance has also been placed on the reference to Section 400(1) of the Kolkata Municipal Corporation Act, 1980 in the said communication, directing the petitioners to demolish the unauthorised portions measuring about 10.92 Sq.m., which had been constructed without any sanction from the Kolkata Municipal Corporation, allegedly infringing Rule 62

and unknown Rules 133 and 134 of the Kolkata Municipal Corporation Building Rules, 2009.

The communication dated April 5, 2022 also indicates the unauthorised work as follows :-

“Unauthorised construction of total area about 10.92 sqm. Without any sanction plan from KMC infringing Rules 62 and unknown Rules 133 and 134 of KMC Building Rules, 2009.”

The communication appears to be a printed format and some information has been filled in.

Mr. Mukherjee, learned Advocate appearing on behalf of the Kolkata Municipal Corporation submits that the communication dated April 5, 2022 is a show-cause notice issued in terms of Section 400(1) of the Kolkata Municipal Corporation Act.

Mr. Mukherjee further submits that an inspection was held on July 7, 2021 and on the basis of such inspection, the matter has been referred to the Special Officer, Building, for hearing.

In view of the specific submission of Mr. Mukherjee that the communication dated April 5, 2022 is a notice to show cause, this Court does not interfere with the same.

This Court is of the opinion that the Corporation has the authority under the law, to proceed against any unauthorized construction. The

authority must categorically demarcate and explain the nature and extent of unauthorized construction to the person responsible, so that the demolition may be effected or the person responsible may get an opportunity to deny the allegations by substantiating his claim as to the legality of such construction.

Under such circumstances, when it is specifically submitted by the petitioner that a proper inspection was held, the writ petition is disposed of with a direction that pending hearing before the learned Special Officer, Building an authorized representative of the Corporation shall make a further inspection and thereafter the proceeding shall be reached to its logical conclusion, in accordance with law.

The matter shall be decided by the concerned Special Officer, Building of the Corporation, by adopting the following procedure :

- a) An inspection of the premises shall be conducted by an authorized engineer. Such inspection shall be held in the presence of the petitioner and the complainant, if any, on 28th April, 2022 at 12 noon. Advance notice of the inspection shall be served upon the complainant, if any. If the complainant is not available to accept notice, the authorities shall affix the notices of hearing and

inspection at conspicuous places in the respective premises. No notice of inspection shall be granted to the petitioner.

- 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 interim measures by stopping such construction.
- c) A 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, if prepared, shall be handed over to the parties.
- e) A hearing shall be given to the petitioner and the complainant, if any by the Special Officer, Building. 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 said authority. All points raised by the parties shall be decided. All documents filed by the parties, if any, shall be exchanged.
- f) A reasoned order shall be passed and communicated. 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 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 question of title, boundary dispute shall not be gone into.

The entire exercise shall be completed within a period of two months from the date of inspection.

It is made clear that the petitioners shall not make any further construction over and above the disputed portion..

With the above observations, this 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.)