

25.2.2022
Court No. 19
Item no.4
sn

WPA 8526 of 2021

Kishor Ghosh
Vs.
The Chandernagore Municipal Corporation
& ors.

Mr. Raghunath Chakraborty
Ms. Amrita De
.....for the petitioner.

Mr. Suman Basu
.....for the Corporation.

A report has been filed by the Chandernagore Municipal Corporation. The same is taken on record. The Court is prima facie satisfied with the report. It has been stated that apart from two shop rooms which have been running from the concerned premises in view of the injunction granted by the Civil Court, all other shop rooms situated at the said building, has been shut down in view of the unauthorized construction detected in the building.

Today, it appears from the report that the construction of the building is almost complete. It is submitted by Mr. Basu, that the unauthorised portion has been demolished by the promoter. The Corporation has stated that the developer may approach the corporation for grant of occupancy certificate in terms of Rule 34A of the West Bengal Municipal Building Rules, 2007 and also for

assessment of the building so that the Corporation can consider the prayer of the petitioner for grant of an enlistment certificate for the shop, upon issuing at least a partial occupancy certificate. The report has been prepared by senior officials of the Corporation, including the Commissioner. The Corporation cannot thus deviate from such report which has been filed before this Court. As such, nothing remains to be decided in view of this report.

The petitioner who is a mere tenant and has taken the shop on rent for his business, cannot be deprived from operating his shop except in accordance with law. Initially, the Corporation had objected to the running of the shop as the certificate of enlistment had not been granted.

The shop is situated in a building where some unauthorised constructions had been detected. The building also does not have a completion certificate or occupancy certificate or even a partial occupancy certificate. The law provides that no one can occupy a building which has not been granted a completion certificate.

This Court had directed the Corporation to file a report indicating whether any other shop room had been granted a certificate of enlistment to operate from the said building. As the report categorically states that the unauthorized portion has been

demolished and the promoter may apply for a partial occupancy certificate and pray for an assessment, this writ petition is disposed of with a direction upon the Corporation to act and proceed according to law. The petitioner's application for provisional certificate of enlistment be disposed of in accordance with law upon hearing the petitioner the landlord and the developer. The only thing which remains now is grant of an occupancy certificate in accordance with law, by the corporation. The corporation shall take steps in this regard in accordance with law, if applied for.

The petitioner is at liberty to proceed against his landlord for damages in view of the loss suffered by him.

The padlock must be removed by the Corporation within 48 hours from date of communication of this order, but the petitioner can only run the shop room in accordance with law upon obtaining a certificate of enlistment, either provisional or permanent.

This writ petition is disposed of.

There will be however no order as to costs.

Parties are to act on the server copy of this order.

(Shampa Sarkar, J.)