

27. 06.12.2022
bd. Ct.15

W.P.A. 6276 of 2009

Md. Shahzada

-vs-

The Kolkata Municipal Corporation & Ors.

Mr. Syed Hassan

Md. Subid Ali

....for the petitioner.

Mr. N.C.Bihani

Ms. Manisha Nath

....for the KMC.

Mr. Ziaul Islam

... for the respondent no.7.

The matter is heard in presence of the learned advocates representing the petitioner, Kolkata Municipal Corporation and the respondent no. 7.

Petitioner has raised grievance relating to alleged unauthorised construction made by the private respondent adjacent to the school premises of the petitioner for which a contemporaneous complaint was lodged before the concerned authority of the Kolkata Municipal Corporation (hereinafter referred to as "KMC").

Petitioner prays for demolition of unauthorised construction made by the private respondents.

Mr. Bihani, learned advocate representing the KMC has submitted that based on the complaint lodged by the petitioner notice under

section 401 of the Kolkata Municipal Corporation Act, 1980 dated 16th November, 2020 was issued and steps were taken to restrain the private respondents not to continue alleged illegal construction violating the sanctioned plan. It has also been submitted that one demolition case has been initiated under section 400 of the Kolkata Municipal Corporation Act, 1980 and the same is pending before the concerned authority for consideration. It has been submitted that previously on two occasions attempts were made to conduct hearing in connection with the said demolition case by sending notices to petitioner as well as private respondents but such hearing could not be held since on the first occasion parties did not turn up and subsequently notices returned with endorsement "address cannot be located".

Private respondent No. 7 is represented by learned advocate who has denied the allegations made on behalf of the petitioner with regard to erection of unauthorised construction disregarding the sanctioned plan by him.

This Court has heard the learned advocates representing the parties and has perused the relevant materials available on record.

Considering the submission made on behalf

of KMC which goes to show that the demolition case has been initiated in terms of section 400 of the Kolkata Municipal Corporation Act, 1980.

This Court finds it proper to direct the concerned authority of KMC to conclude such demolition case after hearing the petitioner and the private respondents.

Today this writ petition is being heard in presence of the learned advocates representing the petitioner and the respondent no. 7. Therefore this Court directs the Executive Engineer Civil (Bldg.) Borough No. IV & V, Building Department, KMC, to hear the demolition case on 21st December, 2022 at 12.00 noon and conclude the hearing on the said date. No further notice shall be served upon the parties to such demolition case for holding hearing on the aforesaid date. On aforesaid date and time the petitioner as well as respondent no. 7 are directed to remain present before the Executive Engineer and make their deliberations.

The Executive Engineer Civil (Bldg.), Borough No. IV & V is further directed to pass a final order on such demolition case and communicate the same to the parties within seven days thereafter.

With the above direction, the writ petition

stands disposed of.

However, it is made clear that the restraint order passed by the coordinate Bench on 8th June, 2009 restraining the private respondents from carrying out further construction shall continue for a period of two weeks after communication of the order to the parties which will be passed by the Executive Engineer on such demolition case.

However, there shall be no order as to costs.

The report filed by the Executive Engineer Civil (Bldg.) Borough No. IV & V, Building Department, KMC, dated 5th December, 2022 is taken on record.

Urgent photostat certified copy of the order, if applied for, be given to the parties, upon usual undertakings.

(Saugata Bhattacharyya, J.)