

Sl. No.38
30.08.2022

Court No.24
B.M.

In The High Court At Calcutta
Constitutional Writ Jurisdiction
Appellate Side

WPA 8680 of 2022

Smt. Pritha Nandy
Vs.
The State of West Bengal & Ors.

Mr. Gopal Chandra Ghosh
Ms. Kaberi Ghosh (Dey)

... for the petitioner

Mr. Moloy Krishna Dey
Mr. Abdus Salam

... for the State

Mr. Debasree Dhamali
Mr. Arijit Bhowmick

... for the respondent no.5

The petitioner claims to be a co-owner of the premises No.99A, Bidhan Sarani, Kolkata-700 004. She alleges that the respondent nos. 5 & 6 were making illegal construction inside the said premises. A civil Suit is pending consideration between the petitioner and the respondent nos.5 & 6. The petitioner claims that an order of injunction has been passed by the learned Court below restraining the parties to change the nature and character of the suit premises.

The petitioner alleges that despite the order of injunction, the private respondents were making construction unauthorisedly.

The petitioner is also aggrieved by the act of the Kolkata Municipal Corporation in issuing notice under

Section 411(1) of the Kolkata Municipal Corporation Act, 1980. According to the petitioner, the aforesaid notice was issued without any prior inspection of the said property. The petitioner contends that the said notice was issued without affording any hearing to the petitioner.

None appears on behalf of the Kolkata Municipal Corporation.

Affidavit of service filed in Court is taken on records.

In the absence of the learned advocate of the Corporation it will not be possible to decide the matter conclusively.

The Executive Engineer, Building Department, Borough-II, the respondent no.4, is accordingly directed to make a spot inspection of the site to ascertain the veracity of the allegation of the petitioner that the private respondent nos.5 & 6 were making unauthorised construction/renovation in the premises in question. The spot inspection shall be conducted upon giving prior notice to all the necessary parties.

On inspection if it appears that unauthorised construction was going on or has been made in the said premises, then prompt necessary steps shall be taken by the Corporation to deal with the same in accordance with law.

As regards notice issued under Section 411(1) of the Kolkata Municipal Corporation Act, 1980 there is nothing on record to show that the petitioner, claiming to be a co-owner of the said property, was given an opportunity of hearing prior to the said notice being issued.

The Executive Engineer, Borough-II, is accordingly, directed not to give any effect or further effect to the impugned notice issued under Section 411(1) of the Kolkata Municipal Corporation Act, 1980 for a period of ninety days from date.

In the meantime, Corporation shall conduct a spot inspection to ascertain the structural stability of the building in question upon notice to all the necessary parties.

The aforesaid respondent shall pass a reasoned order and communicate the same to the parties immediately thereafter.

The writ petition stands disposed of.

Urgent photostat certified copy of this order be supplied to the parties, if applied for, as early as possible.

(Amrita Sinha, J.)