

Sl. No.4
12.07.2022

Court No.24
B.M.

In The High Court At Calcutta
Constitutional Writ Jurisdiction
Appellate Side

WPA 10269 of 2019

Sushil Kumr Pal
Versus
The Kolkata Municipal Corporation & Ors.

Mr. Prosenjit Mukherjee

Mr. Arghya Kamal Das

... for the petitioner

Mr. Achintya Kumar Banerjee

Mr. Dwijadas Chakraborty

Mr. Sk. Sujauddin

... for Kolkata Municipal Corporation

Mr. Tilok Mitra

Mr. Praloy Bhattacharya

... for the private respondent

The petitioner challenges the order passed by the Chairman, Municipal Building Tribunal dated 15th February, 2019 whereby the appeal preferred by the petitioner before the Tribunal stood dismissed and the order passed by the Special Officer (Building), Kolkata Municipal Corporation in the demolition case stood affirmed.

The person responsible for making unauthorised construction was directed to comply with the direction passed by the Special Officer (Building), Kolkata Municipal Corporation failing which the Kolkata Municipal Corporation authority would be at liberty to

demolish the same at the cost and risk of the person responsible.

The Special Officer (Building), Kolkata Municipal Corporation in response to the complaint lodged by the petitioner initiated the demolition proceeding under Section 400(1) of the Kolkata Municipal Corporation Act, 1980 in respect of premises No.3E, Dakshinpara Road, Kolkata. The Special Officer (Building) directed that no order for demolition is passed in respect of the impugned construction subject to compliance of the condition laid down therein.

The person responsible was directed to produce a certificate from any KMC empanelled Licensed Building Surveyor certifying that the structural stability and the foundation of the impugned construction are safe and sound and the materials used as well as workmanship are as per the latest edition of the National Building Code of India (NBCI).

The person responsible was directed to furnish an affidavit on oath declaring that he will not make any construction whatsoever in the impugned premises without prior sanction from the KMC authority and he must pay retention charges to the KMC as calculated by the department. On non-compliance of either of the conditions mentioned therein, the KMC would demolish the same at the cost and at the risk of the person responsible. The private respondent has complied with

the direction passed by the Special Officer (Building) and has also paid the retention charges as assessed.

The petitioner is aggrieved by the act of the Municipal Building Tribunal in affirming the order passed by the Special Officer (Building).

According to the petitioner any construction made devoid the sanctioned plan is unauthorised and is liable to be demolished.

In support of such contention the petitioner relies upon the judgment delivered by this Court in the matter of Ghanashyam Das vs. The Kolkata Municipal Corporation & Ors. reported in 2014(4) WBLR Cal 781, wherein the Court was pleased to hold that any order of regularisation of unauthorised building with or without any condition or on payment of fees or penalty is arbitrary, without jurisdiction and ex facie illegal.

The Executive Engineer (Civil), Building, Borough-XVI of the Kolkata Municipal Corporation has filed a report in the form of affidavit disclosing the nature of unauthorised construction made by the person responsible.

The report mentions that a departmental inspection was carried out at the subject premises to ascertain the nature of unauthorised construction.

It has been revealed that there is deviation in the construction that has been made and the statutory open spaces have not been maintained. There is deviation in

the open space that is statutorily required to be kept open in all four sides of the building.

I have perused the departmental report and found that there is deviation of 0.620m in the front open space, 0.660m in the rear open space, 0.480m in the side open space (1) and 0.580m side open space (2).

It appears that the petitioner is aggrieved by the same.

This is not a case where the construction has been made without a sanction plan. This is a case where there is deviation at the time of making construction. It is true that according to the Kolkata Municipal Corporation Act, 1980 and the Rules framed thereunder statutory open spaces mentioned therein are required to be kept open.

Indeed there has been an infringement in the said open space but as the Special Officer (Building) as well as the Municipal Building Tribunal has opined that the deviation is not such that the entire construction is required to be demolished and the same may pass off as minor deviation, accordingly, the Court does not find any reason to interfere with the order impugned in the present writ petition.

The writ Court ought not to be transformed to a forum for settling private scores in between the parties. The petitioner is primarily aggrieved with the conduct of the private respondents rather than with the action of the respondent authorities.

The Court refrains from interfering with the impugned order.

The writ petition accordingly fails and is hereby dismissed.

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

(Amrita Sinha, J.)