

4.4.2022
Court No. 19
Item No.18
sn

WPA 16276 of 2021

Sumbul Afzal
Vs.
The Kolkata Municipal Corporation &
Ors.

Mr. Moti Sagar Tiwari
Ms. S. Podder ...for the petitioner

Mr. Achinta Banerjee
Mr. Moloy Das ..for the KMC

Ms. Sipra Mazumder
Ms. Rupsha Chakraborty ..for the State

Mr. Anubhav Sinha
Mr. G.B. Sah
Mr. Debjit Mukherjee
Ms. Piyali Dutta ..for the respdts. 5&6

The police authorities are represented by Ms. Sipra Mazumder, learned advocate appearing on behalf of the State respondents.

It appears that a proceeding had been initiated under Section 400(8) of the Kolkata Municipal Corporation Act, 1980 some time in 2019. However, subsequent reports of inspection by the Corporation reveal that structures have been again reconstructed after the demolitions and the building is now fully occupied. The building is situated at 151, Rabindra Sarani, Kolkata 700073, Ward No.42, Borough-V of the Kolkata Municipal Corporation. Although, the proceedings were initiated sometime in 2018 and a demolition programme was undertaken sometime in

July 2018, the demolition could not be concluded. The proceeding has died its natural death in view of inability of the Corporation to execute its own demolition order, in accordance with law.

Report filed by the Corporation reveals that during inspection, it was found that the persons responsible had reconstructed the entire demolished portions and further demolition was made on September 5, 2019.

The petitioner was again informed under the Right to Information Act, 2005 sometime in September 2021 that the demolition was under process.

Mr. Banerjee, learned advocate appearing on behalf of the Corporation submits that due to the pandemic situation and the resistance by the occupants and other local persons, the demolition could not be carried out. He submits that the condition of the building in question and the nature of illegal construction as on date, have to be verified upon joint inspection.

Mr. Sinha, learned advocate for the respondent nos.5 and 6 submits that an application for regularisation of the unauthorised construction made on December 26, 2019, is pending before the Corporation.

Under such circumstances, this Court is of the opinion that the Corporation must proceed afresh in accordance with law with regard to unauthorized constructions which had once been detected at premises no.151, Rabindra Sarani, Kolkata 700073. While doing so, the Corporation shall adhere to the following procedure:-

a) An inspection of the premises will be made in the presence of the parties. As there are allegations of a continuing offence, this Court deems it fit to fix the date of inspection on May 5, 2022 at 12 noon. Advance notice of the inspection need not be served upon the petitioner, the respondent nos.5 and 6 and upon the occupants and/or other interested parties, as this order shall operate as a notice.

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 such interim measures, by stopping such construction.

c) The 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, the respondent nos.5 and 6 and a representative of the occupants and/or other interested parties. 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 competent authority. All points raised by either party, will be decided. All documents filed by either party, shall be exchanged.

f) A reasoned order shall be passed and communicated to the parties. 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 the issues involved shall be decided independently.

It is made clear that all the parties should cooperate with the inspection. A copy of this order shall be affixed on the premises in question by the petitioner as also the Corporation, which shall be treated as communication of the order to the inmates. No further notice of inspection shall be

given and if the Corporation requires police assistance, such assistance shall be provided.

The application for regularization which has been filed by the respondent nos.5 and 6 shall also be decided simultaneously in the proceeding. Such direction shall not be construed as an observation on the right of the said respondents to get such construction regularized.

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

Accordingly, the writ petition is disposed of.

There will be however no order as to costs.

All parties are directed to act on the basis of server copy of this order and/or the learned advocate's communication.

(Shampa Sarkar, J.)