

S/L 19
8.3.2022
Court. No. 19
sn

WPA 16807 of 2021

Smt. Bhabani Bhakta & Anr.
Vs.
The State of West Bengal & Ors.

(Through Video Conference)

Mr. Amlan Jyoti Sengupta
...for the Petitioners.

Mr. Gopal Chandra Das
Mr. Abhishek Sikdar
...for the Kolkata Municipal Corporation.

Mr. Sudipto Panda
Mr. Subrata Ghosh
..for the State

The disputes are with regard to the construction on premises no. 7D, Abinash Chandra Banerjee Lane, Kolkata 700 010. The petitioners are aggrieved by the stop work notice issued under Section 401 of the Kolkata Municipal Act, 1980. The learned advocate for the petitioners submits that in view of the damages the building sustained due to natural wear and tear, some repairs were made. The roof had cracked in various places and rain water was seeping through. In order to prevent further damage to the roof, temporary GI Shed structures had been constructed, as a protection to the old building.

The report prepared by a licensed building surveyor of the Corporation has been relied upon by the petitioners to substantiate their contentions that

the repairing works were necessary to enable them to reside in the premises in question. He further submits that the stop work notice was issued by the Corporation arbitrarily, without conducting any inspection and without considering the repeated requests made by the petitioners to the Corporation, for grant of permission to carry out the repairing works.

The report filed by the licensed building surveyor and the repeated requests made by the petitioners to the Corporation for grant of permission to carry out the repair works, have been annexed to the writ petition. Admittedly, the Corporation did not respond to such requests.

However, as the Corporation had issued a stop work notice, this Court is of the opinion that the Corporation must be directed to dispose of the proceedings in accordance with law upon granting an opportunity of hearing to the petitioners and upon making an inspection of the premises in question in the presence of the petitioners. The Corporation must detect whether the contentions of the petitioners are correct or not.

While disposing of the issues involved, the competent authority of the Kolkata Municipal Corporation shall adhere to the following procedure:-

a) An inspection shall be conducted. Such inspection shall be held in the presence of the petitioners within two weeks. Advance notice of the inspection shall be served upon the petitioners. If the petitioners are not available to accept notice, the authorities shall affix the notice of hearing and inspection at conspicuous places in their respective premises.

b) The report of such inspection shall be prepared along with the sketch map, indicating the extent and nature of unauthorized construction, if any.

c) Such report shall be handed over to the petitioners.

d) A hearing shall be given to the petitioners. The petitioners 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.

e) A reasoned order shall be passed and communicated to the petitioners. 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 of the

petitioners, and the issues involved shall be decided independently.

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

This writ petition is disposed of.

There will be however no order as to costs.

All parties are to act on the server copy of this order.

(Shampa Sarkar, J.)