

Sl. No.353
22.07.2022

Court No.24
B.M.

In The High Court At Calcutta
Constitutional Writ Jurisdiction
Appellate Side

W.P.A 16349 of 2022

Amar Roy
versus
The Kolkata Municipal Corporation & Ors.

Mr. Tanmoy Mukherjee
Mr. Sandip Das
Mr. Souvik Das
Mr. Rudranil Das

... for the Petitioner.

Mr. Gopal Chandra Das
Mr. Rudranil De
... for the Kolkata Municipal Corporation

The matter relates to 5th floor of the building standing on premises No.29/1H, Shib Kristo Daw Lane, Ward No.31, Borough-III, under the jurisdiction of the Kolkata Municipal Corporation.

A notice under Sections 545/546 of the Kolkata Municipal Corporation Act, 1980 has been issued by the Executive Engineer (Civil), Building Department on 15th July, 2022.

The said notice mentions that assistants and the workmen of the Kolkata Municipal Corporation will enter the premises on Friday, 22nd July, 2022 for the purpose of demolition of the unauthorised one additional floor that is fourth floor constructed in deviation of the sanctioned plan.

The petitioner submits that construction has been made in accordance with the building plan sanctioned for construction of G+3 storied building.

The petitioner admits that one additional floor has been constructed without obtaining necessary sanction from the Kolkata Municipal Corporation.

The Municipal Magistrate passed a judgment on 15th February, 2022 upon contested trial on the FIR lodged against such unauthorised construction and passed order of demolition.

The petitioner submits that he was not aware of the judgment passed by the learned Court. After getting the impugned notice, steps were taken for obtaining certified copy and thereafter the present writ petition has been filed.

It has been submitted by the petitioner that an application praying for regularisation of the additional floor is pending consideration before the Commissioner but till date no order has been passed regularising the said unauthorised construction.

The alleged application for regularisation is not annexed to the writ petition.

Fact remains that as on date there is no sanctioned plan for the additional floor that has been constructed by the petitioner.

The petitioner specifically contends that the impugned notice speaks of the additional 4th floor which

has been constructed in deviation of the sanctioned plan. According to the petitioner it is the 5th floor that is unauthorised and not the 4th floor because sanction has already been granted for constructing the G+3 storied structure.

Assuming that the floor number has been incorrectly mentioned but the notice specifically mentions about the one additional floor. The same is enough for identifying the unauthorised construction which has been sought to be demolished.

Under such facts and circumstances, it will not be proper for the writ court under Article 226 of the Constitution of India to interfere in the matter and to pass any order to stay the notice impugned in the present writ petition.

It will be open for the petitioner to approach the appropriate forum for redressal of his grievances in accordance with law, if so advised.

The court is not inclined to interfere in the matter.

The writ petition fails and is hereby dismissed.

Urgent photostat certified copy of this order, if applied for, be given to the parties on completion of usual formalities.

(Amrita Sinha, J.)