

05.01.2022
Court No. 19
Item no.13
CP

WPA 17222 of 2021

Shyamal Sarkar
Vs.
The Kolkata Municipal Corporation & ors.

Mr. Ivan Roy
.....for the petitioner.

Mr. Debjit Mukherjee
Ms. Susmita Chatterjee
....for the K.M.C.

Mr. Gautam Dutta
Mr. Joyak Kumar Gupta
.....for the respondent no. 9.

The writ petition has been filed alleging that the Corporation authorities are not allowing the petitioner to repair an old existing three-storeyed building on premises no. 4/47E, Chanditala Lane, Ward No. 97.

It is submitted that the Corporation had issued a notice under Section 411(1) of the Kolkata Municipal Corporation Act, 1980 in the name of the petitioner, owner of the premises, to demolish the insecured/dilapidated portion and to restore and repair the repairable portion without changing the nature and character of the building under the supervision of an empanelled structural engineer.

It is submitted that the respondent no. 9 has been creating obstructions. As a result of which, the

Corporation authorities have also interfered with the construction work.

Mr. Gupta, learned advocate appearing on behalf of respondent no. 9, submits that a similar notice was also issued to the respondent no. 9 to demolish the insecured/dilapidated portion and to restore and repair the repairable portion without changing the nature and character of the building. It is submitted by him that the petitioner and the respondent No. 9 are co-owners and under the garb of repairing has raised certain unauthorized construction and a Title Suit is pending between the parties alleging encroachment. It is also on record that no injunction has been granted in favour of the respondent no. 9.

The writ petition is disposed of with a direction upon the petitioner to continue with the repair but abide by the instructions given by the Kolkata Municipal Corporation with regard to the repair work. Whether there has been any encroachment, is a matter which will be decided in the suit. Since no injunction has yet been granted in favour of the respondent no.9 against the alleged repairing work, the repairing work shall be done under the supervision of an empanelled structural engineer. The structural engineer shall supervise and monitor

the repairing work and shall not allow any unauthorised construction.

It is made clear that the repairing work to be undertaken by the petitioner and also the respondent no. 9, if any, shall be without prejudice to the rights and contentions of the parties in the suit and no party shall claim any equity with regard to such repairing work.

The writ petition is, thus, disposed of. There shall be no order as to costs.

Parties are to act on the server copy of this order.

(Shampa Sarkar, J.)