

21.2.2022  
Ct. No.19  
Sl.9  
sn

**W.P.A. No. 17809 of 2021**

**Sk. Mostakim**

**Vs.**

**The State of West Bengal & Ors.**

Mr. Soumya Subhra Ray  
..for the petitioner

Mr. Achinta Kumar Banerjee  
Mr. Tarun Kr. Chatterjee  
..for the KMC

Mr. Jahar Dutta  
Mr. Bipin Ghosh  
..for the State

The writ petition has been moved on an apprehension that the respondent no.7 who is the co-owner along with the petitioner in respect of premises situated at Dag No.86, Street No.77, pertaining the Ward No.138 of the Kolkata Municipal Corporation, may raise some unauthorised constructions.

It is on record that on the basis of such apprehension, the petitioner moved the learned Executive Magistrate, 2<sup>nd</sup> Court at Alipore, by filing M.P.Case No. 3743 of 2021. The M.P. Case No. 3743 of 2021 under Section 144(2) of the Code of Criminal Procedure. The application was heard by the the learned Executive Magistrate, 2<sup>nd</sup> Court at Alipore and the police authorities were directed to keep vigil of the situation, enquire and file a report. Such enquiry and order were restricted to the apprehension of breach of peace.

The police authorities have filed a report, from which it appears that steps had been taken to ensure that there was no breach of peace.

The petitioner through his learned advocate wrote a letter to the Commissioner of the Kolkata Municipal Corporation, calling upon the authority to ensure that the order of the learned Executive Magistrate was complied with and that no unauthorised construction took place.

The writ petition does not disclose the nature of unauthorized construction. It is not the petitioner's case that despite unauthorised constructions, the Kolkata Municipal Corporation had failed to take steps on the basis of the petitioner's complaint.

Moreover, the contentions of the petitioner are rather on the basis of an apprehension. The prayers are for a direction upon the Commissioner of Kolkata Municipal Corporation to comply with the order of the learned Executive Magistrate. The order under Section 144(2) Cr.P.C. has lost its force. No orders can be passed.

However, it is the duty of the Corporation to ensure that unauthorised constructions are not allowed to continue. Under such circumstances, if the petitioner files an appropriate application with better particulars before the Corporation, the Corporation will act and proceed in accordance with law.

The report of the police authority is taken on record.

This writ petition is, thus, disposed of.

There will be no order as to costs.

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

**(Shampa Sarkar, J.)**