

28.3.2022
Court No. 19
Item no.3
sn

WPA 19488 of 2021

Dhiraj Ali alias Md.Akash
Vs.
The State of West Bengal & Ors.

Md. Sarwar Jahan
Mr. Moidul Islam Kayal
Mr. Sujan Dasfor the petitioner

Mr. Tapan Coomer Dey
Mr. Dipankar Ghosh
..for the KMC

Mr. Amal Kr.Sen
Mr. Lal Mohan Basu
..for the State

Mr. S.R. Islam ..for the respdt. nos.11-13

The report filed by the Officer-in-Charge, Kasba
Police Station, is kept on record.

The police authorities have rendered all
assistance to the petitioner at the time of affixation of
the writ petition at the disputed premises.

The writ petition has been filed alleging certain
unauthorised constructions by the respondent nos.
11 to 13 at holding no. 232, Picnic Garden Road,
Post Office Tiljala, Police Station Kasba, Kolkata 700
039.

The learned advocate for the respondent nos.
11 to 13 is before this Court and submits that the
said respondents have not indulged in any
unauthorised construction.

Mr. De, learned advocate for the K.M.C. submits that, prima facie, upon inspection, unauthorised constructions have been detected.

As the Corporation has already taken cognizance of the allegations of the petitioner and as the Corporation is the sole authority under the statute, empowered to deal with such constructions, nothing remains to be decided in this writ petition.

This writ petition is disposed of with a direction upon the competent authority of the Kolkata Municipal Corporation, to act and proceed in accordance with law on the basis of the statute and while doing so, the Corporation will adopt the following procedure:-

a) An inspection of the premises shall be conducted. Such inspection shall be held in the presence of the petitioner and the respondent nos.11 to 13, within three weeks. Advance notice of the inspection shall be served upon the petitioner and the respondent nos. 11 to 13 and all other interested parties. If the parties are not available to accept notice, the authorities shall affix the notice of hearing and inspection at conspicuous places in their respective premises.

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 shall be handed over to the parties.

e) A hearing shall be given to the petitioner and the respondents nos.11 to 13. 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.

g)The question of title, encroachment and/or boundary disputes shall not be gone into. The proceeding by the Corporation shall be limited to the question of unauthorized construction, that is, whether such construction has been made in the absence of a sanction or whether the construction has been made in deviation of a sanction or in violation of the rules.

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

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.)