

Item No. 5

12.12.2022
Ct-24

In The High Court At Calcutta
Constitutional Writ Jurisdiction
Appellate Side

WPA 18794 of 2022
Shashikant B. Shah

v.

The State of West Bengal & Ors.
with
CAN 1 of 2022

Mr. Wasim Ahmed
Ms. Kaynat Parveen
Ms. Zeenat Shabab
Md. Kashif

... for the petitioner.

Mr. Arijit Dey
Mr. Debangshu Mondal
... for KMC.

Ms. Disha Shukla
Mr. Partha Chakraborty
Mr. Arghya Mullick
... for the applicant.

The matter relates to the construction at premises
no. 1, Manook Lane, Kolkata-700001, Ward No. 45,
Borough-V, Kolkata Municipal Corporation.

The petitioner submits that construction started
thereon on the basis of a plan sanctioned by the Kolkata
Municipal Corporation. Despite the sanctioned plan, the
Corporation restrained the petitioner from carrying on
with the construction work.

In the present writ petition the petitioner inter alia
prayed for a direction upon the Corporation to withdraw
the notice issued under Section 401 of the Kolkata
Municipal Corporation Act, 1980.

The notice under Section 401 has, however, not been annexed to the writ petition.

Learned advocate representing the Kolkata Municipal Corporation has filed a report affirmed by the Executive Engineer of the concerned borough wherein it has been mentioned that the building department, Borough-V inspected the premises on December 28, 2021 and found that the person responsible has made construction of RCC frame structure and casting of RCC slab in the ground floor. On demand, the person responsible could not produce any commencement notice. The Corporation issued stop work notice under Section 401 as the construction was made in violation of Rule 22 of the Building Rules, 2009. Intimation was sent to the Hare Street Police Station.

During departmental re-inspection it was revealed that unauthorized construction resumed in violation of the stop work notice.

From records it has been found that the architect of the petitioner made formal application on February 1, 2022 with a prayer to resume construction work with further prayer for demolition of the dangerous old structure. The notice of commencement of construction work was received by the office of the building department on May 2, 2022.

From the records it further revealed that the architect of the petitioner had been informed by the Regional Director (E.R.) & Competent Authority (W.B.), National Monuments authority vide communication dated March 17, 2022 that NOC was not granted for making construction at the subject premises. There is a specific finding of the Regional Director and Competent

authority that the owner carried out re-construction in the prohibited area, unauthorizedly, by misleading the office by submitting wrong information. The petitioner was intimated by the Regional Director and Competent authority way back in April 2021 the grounds on which his online application for NOC cannot be granted.

All the communications made between the Regional Director and Competent authority and the building department, Borough-V of the Kolkata Municipal Corporation are annexed to the said report.

Copy of the report has been handed over to the learned advocate for the petitioner in Court today.

From the submissions made on behalf of the parties and upon perusal of the materials placed before this Court, it appears that for making construction at the subject premises a formal no objection certificate is required to be taken from the competent authority of the Archeological Survey of India as the subject premises falls within the prohibited area under the Ancient Monuments and Archaeological Sites and Remains (Framing of Heritage Bye-laws and other functions of the Competent Authority) Rules, 2011.

The petitioner submits that the ground mentioned in the Section 401 notice regarding non-compliance of Rule 22 of the Building Rules is incorrect as the petitioner already submitted the notice of commencement before the Corporation in January 2021.

Learned advocate appearing for the Corporation categorically submits before this Court that the aforesaid document alleging submission of notice of commencement under Rule 22 dated January 15, 2021 is not available in the office records.

The petitioner submits that as the ground for issuance of the stop work notice is incorrect, accordingly, the same is liable to be set aside.

The Court cannot accept such submission.

It has been specifically mentioned in the report filed today that the prayer of the petitioner for raising construction was refused on two occasions on account of non-obtaining NOC from the competent authority. The sanction was obtained by supplying incorrect information before the concerned department.

In view of the above, the prayer of the petitioner for recalling the notice under Section 401 cannot be accepted by the Court.

It will be open for the petitioner to take appropriate steps before the competent authority under the Rules, 2011, if so advised.

The writ petition stands disposed of.

An application for addition of party being CAN 1 of 2022 has been filed by one Aditya Jaiswal.

In view of the order passed herein above, it appears that, the relief claimed by the applicant has already been granted by the Court. Accordingly, no formal order is passed for adding the applicant as party respondent.

Copy of the report filed by the Corporation has been handed over to the learned advocate representing the applicant.

The application stands also disposed of.

Urgent certified photocopy of this order, if applied for, be supplied to the parties expeditiously on compliance of usual legal formalities.

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(Amrita Sinha, J.)