

24
16.11.2022
d.p.

**In The High Court At Calcutta
Constitutional Writ Jurisdiction
Appellate Side**

W.P.A 18870 of 2022

**Md. Perwez Alam
-versus
The Kolkata Municipal Corporation & Ors.**

**Mr. Abhirup Chakraborty,
Mr. Sayantan Chatterjee,
Mr. Shiprovon Seal.
...For the Petitioner.**

**Mr. Dwijadas Chakraborty,
Ms. Manisha Nath.
...For KMC.**

**Mr. Sk. Reazul Islam.
...For the Respondent No.4.**

Affidavit-of-service filed in Court today is taken on record.

Learned advocate for the respondent No.4 submits that he has filed Vakalatnama in the department vide filing No. A-15984 dated 24th August, 2022. The department is directed to tag the same with the records.

The petitioner complains that the private respondent is yet to demolish the unauthorized construction.

It appears that a hearing was conducted by the Special Officer of the Kolkata Municipal Corporation in

compliance of the direction passed by this Court in WPA 14806 of 2021.

A joint inspection at the site in presence of both the parties and the local police was conducted and the report of the joint inspection was served upon the parties. An interim order was passed by the Special Officer (Building) on 22nd March, 2022.

The Special Officer (Building) observed that the building plan was sanctioned on condition that the existing structure on the plot to be demolished before commencement of the construction work. The existing structures are yet to be demolished. There has been infringement in the mandatory side open spaces.

The person responsible has been directed to remove all the structures from the mandatory open spaces and from the land gifted to Kolkata Municipal Corporation.

Further direction was to erect boundary wall at the plot.

The aforesaid works were to be completed within ninety days from the date of communication of the order.

The Special Officer recorded that the person responsible may be allowed to carry out construction work as per the plan after obtaining permission from the department.

It has been admitted by the learned advocate representing the person responsible for making construction that, the demolition work and

construction of the boundary wall as directed by the Special Officer has not been implemented till date.

It has further been admitted that construction work is going on at the subject premises.

From the submissions made on behalf of the parties, it appears that the order of the Special Officer has not been acted upon till date.

In fact, the person responsible has acted contrary to the direction passed by the Special Officer. No permission has been given by the department for carrying out the construction.

The person responsible is liable and duty bound to demolish any construction made over the mandatory side open spaces.

The order of the Special Officer mentions that in the event the unauthorized construction is not removed and the boundary wall is not erected within the stipulated time period, then legal action may be taken from the department.

As admittedly the order passed by the Special Officer (Building) has been flouted, accordingly, necessary steps ought to be taken by the department to deal with the unauthorized construction.

The Special Officer (Building) is, accordingly, directed to take necessary steps in the matter in accordance with law.

The Executive Engineer of the Kolkata Municipal Corporation, Borough-VI and the Officer-in-Charge of

the jurisdictional police station are directed to ensure that no construction in any manner whatsoever is carried on at the subject premises till the matter is finally decided by the Kolkata Municipal Corporation.

The instruction given by the engineer of the Kolkata Municipal Corporation and the copy of the order dated 22nd March, 2022 passed by the Special Officer (Building) be retained with the records.

The writ petition stands disposed of.

Urgent photostat certified copy of this order be supplied to the parties, if applied for, as early as possible.

(Amrita Sinha, J.)