

S/L 10
15.03.2022
Court. No. 19
GB

W.P.A. 19675 of 2021

Nasrin Begum
VS
The Kolkata Municipal Corporation & Ors.

*Mr. M. Maity,
Ms. Soma Mal.*

...for the Petitioner.

*Mr. Himadri Sikher Chakraborty,
Ms. Susmita Biswas Chowdhary.*

...for the State.

*Mr. Subhrangsu Panda,
Ms. Ina Bhattacheryya.*

...for the K.M.C.

Despite service none appears on behalf of the respondent no.11. None appeared on behalf of the respondent no.11 on February 25, 2022, when the matter was taken up for the first time. Pursuant to a direction of this Court, a notice was once again issued upon the respondent no.11. The affidavit-of-service is filed today. It appears that the respondent no.11 has been duly served with the notice.

Mr. Panda, learned advocate appearing on behalf of the Corporation files a copy of his instruction prepared by the competent authority of the Kolkata Municipal Corporation. The said instruction is taken on record. From the said instruction it appears that some constructions of RCC columns and roof over the two storied building has been detected on Premises No.105/9A, Karaya Road, Ward No.64, Borough-VII of the Kolkata Municipal Corporation. The Corporation has also come to a prima facie finding that there may be some encroachment upon the mandatory open side spaces.

As the Corporation has found certain illegalities in the construction on preliminary inspection, this Court is of the opinion that the Corporation must act and proceed in accordance with law on the basis of the complaint lodged by the petitioner. It is made clear that the question of title, encroachment and boundary dispute shall not be gone into. Only the questions of unauthorized construction, violation of the Building Rules and encroachment into the mandatory open side spaces, shall be looked into. The Corporation shall dispose of the entire issue in the following manner:-

a) An inspection shall be conducted. Such inspection shall be held in the presence of the petitioner and the respondent no.11, within three weeks. Advance notice of the inspection shall be served upon the petitioner and the respondent no.11. If the parties are not available to accept notice, the authorities shall affix the notices of hearing and inspection at conspicuous places in their respective premises.

b) The Corporation has already issued a stop work notice under Section 400(1) of the Kolkata Municipal Act, 1980 and has also intimated the matter to the local police station for necessary action. If it is found during such inspection, that the construction is going on, then further interim measure shall be taken by the Corporation.

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 respondent no.11. 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, shall be decided.

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 counter-claims of the parties and the issues involved shall be decided independently.

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.

However, there will be no order as to costs.

All the parties are directed to act on the basis of the learned advocate's communication.

(Shampa Sarkar, J.)