

S/L 8
18.02.2022
Court. No. 19
GB

W.P.A. 20302 of 2021

Gita Das
VS
The Kolkata Municipal Corporation & Ors.

*Mr. Syed Ehtesham Huda,
Mr. Rizwan Alam.*

...for the Petitioner.

*Mrs. Sutapa Sanyal,
Mr. Tapas Kr. Dey.*

...for the State.

*Mr. Debjit Mukherjee,
Ms. Susmita Chatterjee.*

...for the K.M.C.

*Mr. Sanjoy Bose,
Mr. Priyankar Basu Mallick.*

...for the Respondent Nos.10 to 12.

The writ petition has been filed by a resident of a building situated at Premises No.764, Laskarhat Road (Postal-H2A-Naskarhat, Tagore Park), 'Kuber Residency', Kolkata-700039.

It is submitted that the respondent nos.10 to 12 have constructed some additional floors beyond the sanction plan and have been running a restaurant cum hotel under the name of 'Kuber Residency'. It is further alleged that a complaint has been made to the Kolkata Municipal Corporation, but the Corporation has failed and neglected to take steps on the basis of such complaint.

Mr. Sanjoy Bose, learned advocate appearing on behalf of the respondent nos.10 to 12 have produced documents to show that the Corporation had mutated some

of the floors in the said premises in favour of 'Kuber Residency', for commercial use. The Corporation has granted trade licence. Fire licence has been granted by the authorities and permission from the police has also been taken. The said documents are kept on record.

Mr. Mukherjee, learned advocate appearing on behalf of the Kolkata Municipal Corporation has submitted before the Court that a notice under Section 416(5) of the Kolkata Municipal Corporation Act, 1980, has been issued to the respondent nos.10 to 12 for change of user of the property.

The petitioner has alleged unauthorized construction, illegal use of the premises to run a restaurant and hotel and also change of user.

Having heard the learned advocates for the respective parties and having perused the documents produced by the respondent nos.10 to 12, this Court is of the opinion that the demand of justice dated November 9, 2021 made by the petitioner through his learned advocate shall be disposed of in accordance with law upon giving an opportunity of hearing to all the parties.

It is a matter of record that a civil suit is pending between the petitioner and the respondent nos.10 to 12. The civil court has passed an order of injunction restraining the petitioner from disturbing the respondent nos.10 to 12, insofar as, running the guesthouse and the restaurant are concerned. However, such order shall not prevent the Corporation from taking steps under the law with regard to the allegations of unauthorized construction and running a

hotel and restaurant without proper authority of law. The Corporation shall proceed with the matter by adhering the following procedures:

a) An inspection shall be conducted. Such inspection shall be held in the presence of the petitioner, the respondent nos.10 to 12 and other interested parties, within three weeks. Advance notices of the inspection shall be served upon the 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 and the alleged hotel business was without permission and was continuing, the authorities may take such interim measures as are available under the law.

c) Such report shall be handed over to the petitioner as also the respondent nos.10 to 12.

e) A hearing shall be given to the petitioner and the respondent nos.10 to 12 and all other interested parties. The parties must also be allowed to furnish their written version to the said report and adduce oral and documentary evidence in support of their contentions before the competent authority.

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 allegations and the issues involved shall be decided independently.

The entire exercise shall be completed within a period of six 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.)