

S/L 12
09.02.2022
Court. No. 19
GB

W.P.A. 20924 of 2021

Anita Nan Banerjee
VS
The Kolkata Municipal Corporation & Ors.

*Mr. Probal Mukherjee,
Mr. Suhrid Sur.*

...for the Petitioner.

*Ms. Sutapa Sanyal,
Ms. Susnita Saha.*

...for the State.

*Mr. Debjit Mukherjee,
Ms. Shabnam Dey.*

...for the K.M.C.

Affidavit-of-service filed in Court today be kept with the record.

The State respondents have filed a report prepared by the Officer-in-Charge Lake Police Station, which is taken on record.

The petitioner has alleged unauthorized construction on the Western side of Premises No.170/B/224 Lake Gardens, now renumbered as 224 Lake Gardens.

Reliance has been placed on a reply issued by the Executive Engineer (Civil) Building Department, Borough-X of the Kolkata Municipal Corporation, which is at Page-42, being Annexure-P/6 to the writ petition. From the said reply, it appears that no new construction was found by the authorities and the damaged and dangerous portion of the structure outside the premises No. 224, was removed by the person responsible.

Mr. Debjit Mukherjee, learned advocate appearing on behalf of the Kolkata Municipal Corporation has handed up his instructions received from his clients. It appears that a brick built structure with tin shed, which is a 'Sitala Temple' has been found in the Western side of the Premises No.224, Lake Gardens.

Controverting the report filed by the Corporation, Mr. Probal Mukherjee, learned senior advocate for the petitioner relies upon the photographs annexed to the writ petition, to show that some constructions have been raised almost blocking the gate of the premises of the petitioner.

This Court cannot go into the factual disputes raised. It is the Corporation, which is the authority empowered by law, to consider such allegations and ensure that no unauthorized construction takes place.

It is further submitted by Mr. Mukherjee that the structure which has been raised on the land has been recorded as a 'Path' in the record of rights.

Thus, this Court is of the opinion that as there are allegations of unauthorized construction, the Corporation must look into the matter and take steps to ensure that unauthorized constructions do not take place. The Court has not gone into the merits of the claims of the petitioner and the matter is relegated to the authorities for its decision on the entire issue.

While disposing of the issues involved, the Corporation shall adhere to the following procedure:-

a) An inspection shall be conducted. Such inspection shall be held in the presence of the parties, within three weeks. Advance notice of the inspection shall be served upon the petitioner and the person responsible. 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 petitioner as also the person(s) responsible.

e) A hearing shall be given to the petitioner and the person(s) responsible. 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.

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 etc. shall not be gone into by the KMC.

h) This Court directs the competent authority to dispose of the demand of justice made by the learned Advocate for the petitioner which is at Page-37 of the writ petition. The petitioner shall serve this order along with a copy of the aforementioned demand of justice which shall be treated as a complaint, upon the competent authority of the Kolkata Municipal Corporation, for compliance of this order.

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 the learned advocate's communication.

(Shampa Sarkar, J.)