

S/L 10.
18.02.2022
Court. No. 19
sn

W.P.A. 21198 of 2021

Debraj Mukherjee
VS
The Kolkata Municipal Corporation & Ors.

Mr. Neil Basu
Mr. Rahul Kr. Singh ... for the Petitioner.

Ms. Manika Kalra
Ms. Shilpa Jati
Mr. Yashashwi Sundariya ... for the respdts.8&9

Mr. Probal Kr. Mukherjee..Sr.Adv.
Mr. Suhrid Sur ..for the respondent no.10

Mr. Gopal Chandra Das
Mr. Rudranil De ..for the KMC

Ms. Chama Mukherjee
Mr. Gaurav Das ..for the State

The petitioner alleges that some unauthorised construction have been raised by the respondent nos. 8 to 10 on premises no.139, Panchanantola Lane, Kolkata 700 034. The petitioner is the resident of 138, Panchanantola Lane, Kolkata 700 034. It appears that both these premises were created out of premises no.4, Panchanantola Lane, Kolkata 700 034, after a partition between the co-sharer.

The allegation, inter alis, is that the construction has been made in violation of Rule 62 of the Kolkata Municipal Corporation Building Rules, 2009.

Mr. Mukherjee, learned senior advocate appearing on behalf of the respondent no.10/builder submits

that the pictures would itself show that the mandatory side space have been kept and the projections of the building, so far constructed, are not over the spaces required to be left uncovered.

Ms. Kalra, learned advocate for the respondent nos. 8&9 submits that the respondent no.10 has been engaged as the developer and is continuing with the construction exclusively in accordance with the plan and without violation of any rules.

Having considered the rival contentions of the parties, this Court is of the opinion that in order to decide such disputed questions of facts, the appropriate authority would be the Corporation.

Under such circumstances, this writ petition is disposed of with a direction upon the competent authority of the Kolkata Municipal Corporation to dispose of the complaint of the petitioner dated November 1, 2021 by adhering to the following procedure:-

a) An inspection shall be conducted. Such inspection shall be held in the presence of the petitioner and the respondent Nos. 8 to 10, within three weeks. Advance notice 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 was in violation of the sanction plan and the rules, the authorities may take such interim measures as permitted under the law.

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 complainant. 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 shall not be gone into by the Corporation.

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.

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.)