

02
23.12.2022
d.p.

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

W.P.A 27233 of 2022

**Feroze Ahmed
-versus
The Kolkata Municipal Corporation & Ors.**

**Mr. Shuvro P. Lahiri,
Mr. Biswanit Sarkar.
...For the Petitioner.**

**Mr. Aniruddha Mitra,
Mr. Gaurav Purkayastha.
...For the Respondent
Nos.5 and 6.**

**Mr. Barin Banerjee,
Ms. Sima Chakraborty,
Mr. Tapan Coomer Dey.
...For KMC.**

The matter relates to unauthorized construction at the premises no. 1N, Sapgachi, 1st Lane, Ward No.66, Borough-VII under the jurisdiction of the Kolkata Municipal Corporation.

The concerned authority of the Kolkata Municipal Corporation passed an order of demolition on 10th December, 2013. The same was appealed before the Municipal Building Tribunal and by an order dated 24th June, 2022, the Tribunal affirmed the order passed by the respondent Corporation.

In compliance of the order passed by the Tribunal, the Corporation issued the notice under Sections 544

and 546 of the Kolkata Municipal Corporation Act, 1980.

The petitioner submits that the structure in question is an existence for a considerable period of time. It is a factory shed and several workers are working from there. Livelihood of several workers would be jeopardized if the order of demolition is executed.

It appears from the instruction given by the engineers of the Kolkata Municipal Corporation that the area of unauthorized construction is 1063.47 sq.mts. approximately.

The order of demolition was passed way back in the year 2013 but till date the same could not be executed as the appeal was pending consideration before the Municipal Building Tribunal.

The Tribunal heard the matter in details and as such, the submission of the petitioner that fair opportunity was not given to the petitioner to defend the construction cannot be accepted. Construction made unauthorizedly, suffering an order of demolition, ought not to stand any further.

It has been submitted that there is an order of injunction passed by the Learned Civil Court in respect of the selfsame structure.

The order of injunction cannot be made applicable and bind any structure which is unauthorized and suffering an order of demolition passed by the Corporation, affirmed by the Municipal Building Tribunal.

Even though the structure is in existence for a long period, the same cannot be ratified by way of passage of time. As the respondent authority has come to a conclusive finding that the structure is unauthorized and the said finding has been affirmed by the Tribunal, accordingly, the unauthorized structure is liable to be demolished immediately.

The instruction provided by the engineers of the Corporation reveals that part demolition has been conducted but there are still some portions which cannot be demolished as it is occupied.

The men and agents of the Kolkata Municipal Corporation will be at liberty to seek assistance from the jurisdictional police station for executing the order of demolition.

In the event, a request is made by the Corporation to the police, then necessary assistance shall be provided by the police to the men and agents of the Corporation for executing the order of demolition.

The writ petition, accordingly, fails and is hereby dismissed.

Instruction given by the engineers of the Kolkata Municipal Corporation signed on 22nd December, 2022 be retained with the records.

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

(Amrita Sinha, J.)