

Item No. 4

21.12.2022
Ct-24

In The High Court At Calcutta
Constitutional Writ Jurisdiction
Appellate Side

WPA 28049 of 2022
Md. Sheikh Nuru & Anr.

v.

The Kolkata Municipal Corporation & Ors.

Mr. Sakya Sen
Mr. Soumava Mukherjee
Mr. Sunil Kumar Gupta
... for the petitioners.

Mr. Susanta Pal
Mr. Ananya Neogi
... for the State.

Mr. Gopal Chandra Das
Mr. Arijit Dey
... for KMC.

The petitioners are aggrieved by the act of the Special Officer, Kolkata Municipal Corporation in passing order on December 10, 2022 without affording reasonable opportunity of hearing.

It appears from records that the demolition proceeding was initiated in the year 2017. Two opportunities of hearing were provided to the petitioner in the year 2018 but thereafter, for reasons best known to the authority, the demolition proceeding remained pending.

A notice of hearing was issued to the petitioner no. 1 informing that a hearing will be conducted before the Special Officer (Building) on December 10, 2022. Similar notice was issued in favour of the petitioner no. 2 but the date of hearing was not mentioned in the hearing notice.

Learned advocate for the petitioners submits that on December 10, 2022 an adjournment was sought for, but the Special Officer (Building) refused to adjourn the hearing and passed order on the same day.

It has been submitted that none of the arguments which were placed before the Special Officer (Building) on December 12, 2022, as per the leave granted by the Special Officer (Building), was taken into consideration as the matter stood concluded on December 10, 2022.

Prayer has been made for affording a fresh opportunity of hearing to the petitioners.

Learned advocate representing the Kolkata Municipal Corporation has placed before this Court the order which was passed by the Special Officer (Building) on December 10, 2022. The same is retained with the records.

It has been contended that after passing the order the Special Officer (Building) has become functus officio will not be in a position to reopen the case. It has been submitted that the order is an appealable one and the petitioners may raise all points before the appellate forum.

I have heard the submissions made on behalf of both the parties. It appears that though the initial notice to stop work was issued in the year 2017, but for reasons not made known to the Court, the Corporation did not take any step to conclude the demolition case for a considerable period of time. The complaint lodged before the police was however proceeded before the Senior Municipal Magistrate.

In furtherance to the order passed by the Court in the criminal revision application filed by the petitioners seeking quashing of the proceeding pending before the Senior Municipal Magistrate, a notice was issued directing the petitioners to appear for a hearing before the Special Officer (Building) on December 10, 2022. Though, the date of hearing was mentioned in one of the notices, but the date of hearing was not indicated in the notice issued in favour of the petitioner no. 2. There is nothing on record to suggest that the petitioner no. 2 was afforded an opportunity of hearing prior to passing the order on December 10, 2022.

As it appears that the order of the Special Officer was passed without affording a reasonable opportunity of hearing to both the petitioners, accordingly, the order which has been placed in Court today dated December 10, 2022 passed by the Special Officer (Building) in Demolition Case No. 014-D/Br-X/18-19 suffers from the principle of violation of natural justice. The same is liable to be set aside and is accordingly set aside and quashed.

The Special Officer (Building) is directed to revisit the issue by affording fresh opportunity of hearing to all the necessary parties and pass a fresh order in accordance with law.

Steps shall be taken to dispose of the demolition case at the earliest, but positively within a period of eight weeks from the date of communication of a copy of this order without granting any unnecessary adjournment to any of the parties.

The writ petition stands disposed of.

The writ petition is of three volumes. The second volume is missing. Photocopy of the second volume has been handed over by the learned advocate for the petitioner in Court. The same is retained with the records.

Urgent certified photocopy of this order, if applied for, be supplied to the parties expeditiously on compliance of usual legal formalities.

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(Amrita Sinha, J.)