

Item No. 5

21.12.2022
Ct-24

In The High Court At Calcutta
Constitutional Writ Jurisdiction
Appellate Side

WPA 28385 of 2022
Subrata Banick Roy & Ors.

v.

The Kolkata Municipal Corporation & Ors.

Mr. Debanik Banerjee
Mr. Steven S Biswas
... for the petitioners.

Mr. Dwijadas Chakraborty
Mr. Abhishek Sikdar
... for KMC.

Ms. Piyali Sengupta
... for the State.

The petitioners are aggrieved by the notice dated December 9, 2022 issued under Sections 544 and 546 of the Kolkata Municipal Corporation Act, 1980 intimating one Mr. Abir Sikdar that the men and agents of the Kolkata Municipal Corporation will enter the Premises No. 73M, Moulana Abul Kalam Azad Sarani, Ward No. 33, Borough-III for demolishing the unauthorized portions as per the order dated September 29, 2022 passed by the Senior Municipal Magistrate, Calcutta in Case No. 2661 of 2016, CNR No. WBCS03-02742-2016.

The petitioners claim to be lessees of the portions which are directed to be demolished. It has been submitted that the petitioners were not made aware about the unauthorized construction. No opportunity of hearing was given to the petitioners prior to issuance of the notice under Sections 544 and 546.

The learned advocate representing the Kolkata Municipal Corporation has placed before this Court the order dated September 29, 2022 passed by the Senior Municipal Magistrate, Calcutta.

It appears therefrom that the aforesaid demolition proceeding was initiated in the year 2016. The person responsible for making construction i.e. Abir Sikdar, the private respondent herein was afforded reasonable opportunity to defend himself. The Court found him guilty of the offence punishable under the Kolkata Municipal Corporation Act, 1980 and directed the Municipal Commissioner or any person authorized by him to demolish the unauthorized, irregular, invalid, illegal and unlawful erection/construction work in the subject premises.

It has been submitted that the notice under Sections 544 and 546 has been issued in compliance of the direction passed by the learned Court below.

It appears from the submissions made on behalf of the parties that the petitioners claim to be the lessees of the disputed portions which are to be demolished. Copy of the deeds of lease and assignment annexed to the writ petition indicates that the same was entered in the year 2016 onwards. The unauthorized construction took place prior thereto.

The petitioners cannot be permitted to take benefit or enjoy any portion which has been constructed contrary to the provisions of law.

The person responsible for making construction was afforded opportunity of hearing. The said person faced a regular trial and judgment was delivered by the

Court on September 29, 2022. The men and agents of the Corporation are bound to comply the direction passed by the Senior Municipal Magistrate.

The petitioners cannot be permitted any opportunity to hold on to any structure constructed contrary to the provisions of the Kolkata Municipal Corporation Act, 1980. If the prayer of the petitioners are to be accepted, then the demolition proceeding can never be concluded and the erring builder will always try to induct tenants/licensees to stall and prevent the execution of the order of demolition.

In view of the above, no relief can be granted to the petitioners in the present writ petition.

The writ petition fails and is hereby dismissed.

The men and agents of the Corporation will be at liberty to take steps to act in compliance of the direction passed by the Senior Municipal Magistrate.

Copy of the judgment dated September 29, 2022 be 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.)