

OD-3

ORDER SHEET

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
ORIGINAL SIDE

WPO/148/2021
SOUMENDRA KRISTO DUTT AND ANR.
VERSUS
KOLKATA MUNICIPAL CORPORATION AND ORS.

BEFORE:

The Hon'ble JUSTICE SHAMPA SARKAR

Date : 18th May, 2022.

Appearance:

Mr. Abhrajit Mitra, Sr. Adv.

Mr. Sarvapriya Mukherjee, Adv.

Mr. Dipendra Nath Chunder, Adv.

For the petitioners.

Mr. Atish Dipankar Roy, Adv.

Ms. Sanjukta Ray, Adv.

For the respondents.

Mr. Barin Banerjee, Adv.

Mrs. Sima Chakraborty, Adv.

For the K.M.C.

Mr. Debjit Mukherjee, Adv.

Ms. Susmita Chatterjee, Adv.

For the State.

The Court :- The petitioners have alleged unauthorized construction by the respondent no.8 on premises No. 34B, Shakespeare Sarani, Kolkata-700 017. The respondent no.8 is a tenant in respect of a shop room on the ground floor. Allegation is that another floor has been constructed. An eviction suit is pending before the Small Causes Court, being Ejectment Suit No.

06 of 2020. A complaint with regard to such illegal construction was filed before the Corporation on January 29, 2021 through their learned advocate.

Mr. Roy, learned Advocate appearing on behalf of the respondent no.8, submits that the construction was permitted by the landlord sometime in the year 1987/1988. This is the specific defence of the respondent no.8 in the suit. That the petitioners have been using different methods to evict the respondent no. 8 from the said premises. The Corporation has been approached as an arm twisting method.

This Court, sitting in judicial review cannot decide the issues raised by either of the parties. When the allegation is of unauthorized construction, it is only the Corporation, which is permitted under law, to take steps upon making enquiry.

Under such circumstances, the writ petition is disposed of with a direction upon the competent authority of the Kolkata Municipal Corporation to decide the complaint with regard to such illegal construction which was filed before the Corporation on January 29, 2021 through the learned advocate of the petitioners. While disposing of the said complaint, the following procedure shall be adhered to:-

- a) The Engineering Department of the Corporation shall cause an inspection of the premises in question upon

notice to the parties. Upon inspection, the Corporation may adopt appropriate interim measures as may be, prima facie, necessary.

- b) An inspection report with a sketch map, indicating the nature and extent of the unauthorized construction shall be prepared. Copies of the inspection report and sketch map shall be handed over to the parties.
- c) Parties will be entitled to file their written objection/written versions to the said report and also adduce oral and documentary evidence in support of their contentions.
- d) A reasoned order shall be passed and communicated to the parties upon giving an opportunity of hearing to all.
- e) The proceedings must be reached to its logical conclusion on the basis of what transpires during the inspection and at the hearing.

It is made clear, that this Court has not gone into the merits of the claim of the petitioners.

The question of title, possession etc. shall not be gone into by the Corporation. The proceedings shall be restricted to the allegations of unauthorized construction. This order shall not prejudice the civil suit.

The entire exercise should be completed within a period of four months from the date of communication of this order.

The report filed by the police authority is taken on record.

All parties are to act on the basis of the server copy of this order.

(SHAMPA SARKAR, J)

snn.