

OD-2

ORDER SHEET

WPO/1474/2022

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
ORIGINAL SIDE

GAYATRI SAHA AND ANR.
Versus
THE KOLKATA MUNICIPAL CORPORATION AND ORS.

BEFORE:

The Hon'ble JUSTICE SHAMPA SARKAR

Date : 16th March, 2022.

Appearance:
Mr. Raghunath Chakraborty, Adv.
For the petitioners.

Mr. Alok Kumar Ghosh, Adv.
Mr. Dwijadas Chakraborty, Adv.
For the K.M.C.

Ms. Sipra Mazumdar, Adv.
Ms. Prativa Ghatak, Adv.
For the State of West Bengal.

The Court :- The petitioners allege that the construction raised by the respondent no.6, had substantially damaged certain portions of the premises of the petitioners situated at 17, Fakir Chand Mitra Street, Kolkata-700009.

It is submitted that although the petitioner made a prayer before the Special Officer (Building) in the demolition proceeding that the damaged portion of the residence of the petitioners must be either repaired, or the petitioners must be compensated, but the Special Officer (Building) did not pass any order on the basis of such complaint. The

petitioners were the complainants before the Kolkata Municipal Corporation. On the basis of the said complaint, Demolition Case No. 22-D/IV/21-22 was initiated, and necessary orders were also passed.

It is contended by the petitioners that even if the Special Officer (Building) did not direct compensation, the Indemnity Bond filed for grant of building sanction, by the Corporation, itself provided for an undertaking to compensate any loss or damage caused to a third party in the process of construction. The clause relied upon by Mr. Chakraborty is quoted below:-

“AND WHEREAS I/We undertake that all precautionary measures shall be undertaken by me/us and no excavation shall be carried out beyond the boundaries of the plot and any damage occurring during the execution of the works or due to excavation made at site to the municipal services or public utility services or properties/other third person’s properties shall be made good by me/us.”

It is submitted by Mr. Chakraborty, that the respondent no. 6 had submitted that such an Indemnity Bond when he got a sanction and the Corporation must pass an order invoking the said clause.

Mr. Ghosh, learned Advocate appearing on behalf of the Kolkata Municipal Corporation, submits that the Special Officer (Building) did not have the authority to decide whether there has been any damage to the property or not. It is further submitted that the petitioners ought to have approached the Corporation at the time when the construction was

continuing and not after six months from the date when the order of demolition has been passed. There is substance in Mr. Ghosh's submission, inasmuch as, when a construction was completed sometime ago, it would be difficult to ascertain the damage. In any event, this Court under writ jurisdiction cannot pass any order as prayed for in the writ petition. The petitioners may approach the Executive Engineer (Civil)/Building Department, Borough-V with their grievances. If such approach is made, the authority shall pass a reasoned order and dispose of the representation, so filed in accordance with law upon hearing the petitioner as also the respondent No. 6. The reasoned order shall be communicated to the parties, within three months from the date of receipt of the representation.

Report of the police authority is taken on record.

(SHAMPA SARKAR, J)