

WPO No.2164 of 2022
IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
ORIGINAL SIDE

SMRITIKONA NAYOK
Vs.
THE KOLKATA MUNICIPAL CORPORATION & ORS.

BEFORE:

The Hon'ble JUSTICE AMRITA SINHA
Date: 13th June, 2022.

Appearance:
Mr. Raghunath Chakraborty, Adv.
Ms. Amrita De, Adv.
...for Petitioner.

Mr. Ranajit Chatterjee, Adv.
Mr. Swapan Kumar Debnath, Adv.
...for KMC.

The Court:- The petitioner claims to be the owner and occupier of a residential flat measuring about 350 sq.ft. in the 11th floor of the premises No.9A, Jatindra Mohan Avenue, Ward No.18, Borough-II, Kolkata-700 006. The petitioner submits that her name has already been mutated in the records maintained by the Kolkata Municipal Corporation.

A complaint was filed before the Kolkata Municipal Corporation alleging that there has been unauthorised construction in the aforesaid premises. As there was inaction on the part of the Kolkata Municipal Corporation to take steps in response to the complaint made by the complainant a writ petition was filed before this Court being WPO No.407 of 2020.

Pursuant to the order passed by the Court in the earlier writ petition the Special Officer (Building), Kolkata Municipal

Corporation heard the matter on 17th March, 2021 and 16th April, 2021.

It appear from the order passed by the Special Officer (Building) on 7th May, 2021 that an earlier writ petition was also filed before this court being WP No.8841[W] of 2019 where the court was pleased to issue necessary direction upon the Kolkata Municipal Corporation to proceed in accordance with law.

The official of the Borough-II made a site inspection on 8th August, 2019. The status report mentions that initially the construction of one residential building (partly G+2 storied and partly G+11 storied) in separate block was sanctioned at the above premises. Subsequently, addition and alteration plan was approved. Completion certificate was issued on 22nd May, 2008. After the completion certificate was issued, an unauthorised construction was made at the 11th floor covering the open space. The said area has been covered up by brick work, RCC slab and glass with frame and the total height of the said structure is divided into two floors with wooden platform and wooden stair. Part of the residential portion at the 11th floor is converted into a big room covering a small portion of the open terrace with RCC slab and brick wall.

Order passed by the Special Officer (Building) mentions that there has been infringement in respect of the front open space (East), rear open space (West), side open space (North)

and side open space (South). No rear, front and side open spaces have been maintained.

Car parking spaces required according to Rule 78 is 35, whereas only 26 car-parking spaces have been made. So, there was an infringement with Rule 78 also.

As regards the plinth in Rule 105(1) there has been an infringement. The clear height of habitable room in accordance with Rule 106(3) has not been followed. There has been an infringement with regard to external wall and thickness.

Special Officer (Building) was of the opinion there has been unauthorised construction in respect of 247.51 sq.m. Area of change of use is 114.609 sq.m.

Though the petitioner claims that notice of hearing was not served upon the petitioner, but it appears from the order dated 7th May, 2021 that the petitioner appeared in the said hearing and her submission was taken into consideration.

After hearing all the parties and upon going through the documents, report and the demolition sketch submitted by the concerned Borough, the Special Officer was of the opinion that the person responsible has done the unauthorised construction transgressing all legitimate rights of the flat owners solely to earn money. The free access of the flat owners to the roof and open terrace of the building cannot be denied by the person responsible. Such an additional and major construction in the 11th floor is a potential threat to the structural safety of the building.

Direction was passed for demolition of the unauthorised construction within a stipulated time period the order passed by the Special Officer (Building) was approved by the Mayor-in-Council and thereafter the same was served upon the person responsible for making construction as well as the complainant for information and necessary action.

The grievance of the petitioner is that since the portion where she is residing has already been mutated in her name; she has a legal right to be represented. The petitioner complains violation of principle of natural justice.

Learned Advocate representing Kolkata Municipal Corporation submits that as the petitioner was inducted in the flat in question after the completion certificate was issued, accordingly, she does not have a right to be given a notice of hearing for ascertaining or taking steps against any unauthorised construction, that has been constructed in the said premises.

Provision of section 400(2) has been relied upon which mentions that the Municipal Commissioner may make an order under sub-section (1) notwithstanding the fact that the assessment of such building has been made for levy of the property tax on lands and buildings.

Provision of section 401A has also been relied upon.

It appears from the submissions made on behalf of the parties that admittedly the portion of the premises which the petitioner is occupying is an unauthorised one. An occupier

of an unauthorised premises cannot claim any legal right to be represented at the time of taking a decision with regard to the unauthorised construction specially when the persons responsible for making the unauthorised construction have admitted that the construction was made in the roof and open terrace of the building without obtaining any sanction.

There is already an opinion of the Special Officer (Building) that the construction that has been made is an addition and major construction and also potential threat to the structural safety of the building. Moreover, the flat owners who purchased flat in the said building are also entitled to enjoy the open terrace and the roof. The person responsible ought not to make construction over the said roof and the open terrace infringing with the right of enjoyment of the flat owners of the said premises. Though formal notice was not served upon the petitioner, but the petitioner was admittedly heard by the Special Officer at the time of passing the order on 7th May, 2021. Accordingly, the allegation of the petitioner that there has been violation of principle of natural justice cannot be accepted.

In view of the above, the Court does not find any reason to interfere with the instant writ petition. Hence, the writ petition fails and is hereby dismissed.

Affidavit of service filed in Court today be taken on record.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties upon compliance of usual legal formalities.

(AMRITA SINHA, J.)

nm/sb