

WPO No.2293 of 2022
IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
ORIGINAL SIDE

MD. SABIR
-Versus-
THE KOLKATA MUNICIPAL CORPORATION & ORS.

BEFORE:
The Hon'ble JUSTICE AMRITA SINHA
Date: 14th July, 2022.

Appearance:

Mr. Rohit Banerjee, Adv.
Mr. Arindam Paul, Adv.
Ms. Parna Mukherjee, Adv.
Mr. Saswata Chatterjee, Adv.
..for Petitioner.

Mr. Alok Kumar Ghosh, Adv.
Mr. Dilip Chatterjee, Adv.
Mr. Debangshu Mondal, Adv.
..for KMC.

Mr. Debjit Mukherjee, Adv.
Ms. Susmita Chatterjee Adv.
..for State.

Mr. Javed K. Sanwarwala, Adv.
...for Respondent No.6 to 8.

The Court:-The petitioner has filed the instant writ petition praying for issuance of Writ of Mandamus setting aside/cancelling/quashing/rescinding and/or withdrawing the purported order passed on 15th January, 2019 by the Special Officer (Building) of the Kolkata Municipal Corporation whereby the illegal construction made in the premises no.1/D, Chatu Babu Lane, Kolkata-700 014 has been regularised.

The grievance of the petitioner is that the petitioner was not given an opportunity of hearing in connection with the complaint made by him against unauthorised construction. According to the petitioner, the aforesaid order

was passed on the basis of the complaint lodged by one Smt. Priya Dutta. The petitioner submits that he has separate allegations against the illegal construction and the complaint of Smt. Priya Dutta may not necessarily be the same.

It appears that the petitioner filed an earlier writ petition being W.P.No.190(w) of 2018, which stood disposed by the Court on 19th February, 2020 by directing the Kolkata Municipal Corporation to take steps in accordance with law and to take demolition proceedings to its logical conclusion. The said order was passed on the basis of a report filed by the Kolkata Municipal Corporation wherein it was clearly mentioned that unauthorised construction had been made in the said premises. The report also mentioned that appropriate steps had been taken for initiation of demolition proceedings under Sections 400 and 401(1) of the Kolkata Municipal Corporation Act, 1980.

After the writ petition stood disposed of by the Court, the petitioner filed General Application being G.A. No.3 of 2021 praying for modification of the order passed on 19th February, 2020. The said interlocutory application was disposed of by the Court on 20th April, 2022 mentioning that the order did not prejudice any of the rights of the petitioner. The petitioner in the earlier writ petition failed to obtain an order directing the Kolkata Municipal Corporation to grant an opportunity of hearing to the petitioner at the time of passing the order of demolition.

It appears that the Kolkata Municipal Corporation also filed an interlocutory application being GA No.2 of 2020 seeking modification of the

order dated 19th February, 2020 by indicating that due to inadvertence, it could not be pointed out to the Court that the demolition proceedings initiated by the Kolkata Municipal Corporation had already been concluded. The Court was of the opinion that there was no purpose in issuing further direction and the writ petition stood disposed of relying on the report dated 20th June, 2018.

According to the learned Advocate for the petitioner, the petitioner was not aware of the order of demolition passed by the Special Officer (Building) on 15th January, 2019.

Learned Advocate representing the Kolkata Municipal Corporation submits that the said order of demolition was annexed to the General Application filed by the Kolkata Municipal Corporation in the year 2020 and the same was duly served upon the learned advocate for the petitioner.

It appears from the submissions made on behalf of the parties that the petitioner did not take any steps before the appropriate authority highlighting his grievance from the year 2020 till filing of the present writ petition in June, 2022. The petitioner way back in the year 2020 became aware of the fact that demolition order was passed relying upon the complaint of one Smt. Priya Dutta. Had the petitioner taken steps in proper time, then the petitioner may have got an opportunity of hearing before the appropriate authority. The petitioner has failed to act in proper time and has approached this Court after nearly two years of getting knowledge of the order. The Corporation has already regularized the alleged illegal construction in January 2019. It will not be proper to reopen the issue all over again.

In view of the above, no relief can be granted to the petitioner in the instant case.

The writ petition fails and is hereby dismissed.

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

(AMRITA SINHA, J.)

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