

OD-4

ORDER SHEET

WPO No.2351 of 2022
IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
ORIGINAL SIDE

LAKASMI KANTA MONDAL & ANR.
Vs.
KOLKATA MUNICIPAL CORPORATION & ORS.

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

Appearance:
Mr. Aniruddha Mitra, Adv.
Mr. Anirban Ghosh, Adv.
...for Petitioners.

Mr. Barin Banerjee, Adv.
Mr. Jayanta Kr. Dhar, Adv.
...for KMC.

Mr. Dhilon Sengupta, Adv.
Mr. Diptyendu Kumar Pal, Adv.
...for Respondent No.7.

Mrs. Tapati Samanta, Adv.
..for State.

The Court:- Mr. Santanu Baral, Executive Engineer (Building), Borough-IV & V, Ward No.4, Kolkata Municipal Corporation being the respondent No.4 is personally present in Court today.

A report has been filed on affidavit. It mentions that portion of 50A, Raj Kumar Chakraborty Sarani, Kolkata-700 009 has been demolished as it was found to be unauthorized.

According to the petitioners, the portion which has been demolished falls under the premises no. 3, Raja Ram Mohan Sarani, Kolkata-700 009 and not within the premises no. 50A, Raj Kumar Chakraborty Sarani, Kolkata-700 009.

The petitioners are the tenants of the said premises and submit that they are carrying on business at the said premises for a considerable period of time. Trade license issued on the said premises in the year 1996 has been relied upon to show that the construction is there for a long time.

The landlord of the premises submits, upon instruction that, the demolition has been carried out in the rear end of the premises no. 3, Raja Ram Mohan Sarani, Kolkata-700 009. The said area is an extension of the premises no. 3, Raja Ram Mohan Sarani, Kolkata-700 009 and not premises no. 50A, Raj Kumar Chakraborty Sarani, Kolkata-700 009.

It is an admitted fact that the notice of demolition was not served in respect of the premises no. 3, Raja Ram Mohan Sarani, Kolkata-700 009 but notice was issued for demolition of portion of the premises no. 50A, Raj Kumar Chakraborty Sarani, Kolkata-700 009.

A hearing was conducted on 10th September, 2022. The hearing notice was not served upon the owner of the premises.

The Executive Engineer (Building), Borough-IV & V, Ward No.4, Kolkata Municipal Corporation submits in Court that the property was identified by the complainant Asit Baran De of premises no.49, Raj Kumar Chakraborty Sarani, Kolkata-700 009.

It was the duty of the Executive Engineer (Building), Borough-IV & V, Ward No.4, Kolkata Municipal Corporation to verify the address from the owner of the premises and not rely upon the statement of the complainant.

It appears that the Kolkata Municipal Corporation officials demolished the portion of the premises no. 3, Raja Ram Mohan Sarani, Kolkata-700 009 in the

garb of carrying out demolition in the premises no.50A, Raj Kumar Chakraborty Sarani, Kolkata-700 009 upon wrong identification of the premises.

Learned advocate appearing on behalf of the landlord submits that no notice prior for the demolition or for hearing conducted on 10th September, 2022 was issued upon the trustees of the Trust.

It appears from the submissions made on behalf of the parties that there is an issue with regard to the identification of the property in question. The owner is an important party who can identify the premises.

In view of the above, the Deputy Chief Engineer (North), Kolkata Municipal Corporation, being the respondent no.3, is directed to give fresh opportunity of hearing to the petitioners, the owners of the property, the complainant and the men and agents of the Kolkata Municipal Corporation who carried out the demolition work.

If the respondent no.3 is of the opinion that proper notice was not served either upon the persons responsible for making construction or the owner(s) of the premises in question, then necessary remedial steps shall be taken by the aforesaid respondent strictly in accordance with law.

The hearing shall be conducted by the respondent no.3 at the earliest, but positively within a period of eight weeks from the date of communication of this order. A reasoned order shall be passed by the respondent no.3 and communicated to the parties immediately thereafter.

Upon considering submission of the Executive Engineer (Building), Borough-IV & V, Ward No.4, Kolkata Municipal Corporation present in Court, the

petitioners are permitted to clear the debris and to take steps to make the area habitable.

The writ petition stands disposed of.

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

(AMRITA SINHA, J.)

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