

OD-5

ORDER SHEET
WPO No. 2916 of 2022
IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
ORIGINAL SIDE

ASHOK SINGH RAJPUT & ANR.
VS.
THE KOLKATA MUNICIPAL CORPORATION AND ORS.

BEFORE:
The Hon'ble JUSTICE AMRITA SINHA
Date: 21st November, 2022.

Appearance:
Mr. Raghunath Chakraborty, Mrs. Sonali Ghosh Basu,
Mrs. Sonali Sengupta, Advocates for the Petitioners.

Mr. R. Chatterjee , Mr. Arijit Dey, Advocates for KMC.

The Court:-The immediate cause of action for filing the present writ petition is a communication dated 14th October, 2022 by the Executive Engineer (Civil)/ Building, Borough Nos. XIII & IV, Kolkata Municipal Corporation, intimating the petitioners that as per order passed by the Municipal Building Tribunal vide No.56 dated 30th May, 2022, the order passed by the Special Officer (Building) dated 21st December, 2013 is to be carried out failing which necessary action will be taken.

The matter relates to the premises No.63, Mitra Colony, Ward No.121, Borough No. XIII under the jurisdiction of the Kolkata Municipal Corporation. In respect of the aforesaid premises, a Demolition Case being No.39-D/XIV/2012-13 was initiated.

The person responsible was directed to demolish the unauthorized construction of the office rooms on the western portion. The person responsible made unauthorized construction at the

ground floor by converting the car parking space into an office space. At the time of consideration of the demolition proceedings, the person responsible filed an application for regularisation of the unauthorized construction.

The Special Officer (Building), Kolkata Municipal Corporation by an order dated 21st December, 2013 clearly mentions that no order can be passed for change or for regularisation of any unauthorized construction on the plea that the person responsible/promoters and the flat owners have arrived at an agreement in the meantime.

The Special Officer (Building), Kolkata Municipal Corporation held that the person responsible cannot be allowed to convert any car parking space into an office and the provision of the car parking space as required according to the plan cannot be allowed to be converted.

Being aggrieved by the order passed by the Special Officer (Building), Kolkata Municipal Corporation, the person responsible approached the learned Municipal Building Tribunal by preferring appeal being B.T.A. No.34 of 2014. The appeal was fixed for judgment on 30th May, 2022.

On the said date, the appellant filed a petition praying for withdrawal of the appeal. Learned Municipal Building Tribunal recorded in the order dated 30th May, 2022 that the judgment is ready but the appellant does not want to proceed with the appeal any

further. Passing of the judgment stood postponed. The appellant was permitted to withdraw the appeal at his own risk with a direction not to re-file the appeal further in future against the order before the learned Municipal Building Tribunal. All the interim orders passed by the Tribunal stood recalled.

The petitioners claim that they were not aware of the demolition proceeding and accordingly, they did not approach the learned Municipal Building Tribunal for relief.

After the service of the letter dated 14th October, 2022, the petitioners claim to have got knowledge of the demolition proceedings and seek leave before this Court to challenge the order passed by the Special Officer (Building), Kolkata Municipal Corporation.

It has been submitted that the promoters/the person responsible did not intimate the petitioners with regard to pendency of the demolition proceeding and the petitioners were in complete dark about the same.

Prayer has been made to permit the petitioners to challenge the order passed by the Special Officer (Building), Kolkata Municipal Corporation.

The prayers of the petitioners have been opposed by the learned advocate representing the Kolkata Municipal Corporation.

It appears from the submissions made on behalf of the parties and upon perusal of the materials on record that the petitioners

purchased the property in August, 2013. The demolition case is of the year 2012-2013. The order of demolition was passed by the Special Officer (Building), Kolkata Municipal Corporation way back on 21st December, 2013.

Admittedly, the portion which the petitioners purchased is an unauthorized one. The same is a car parking space converted to an office space and sold out to the petitioners as bedroom. The schedule of the deed of sale of the petitioners does not mention about any office room. It speaks about a self contained flat of the super built-up area 900 sq. ft. consisting of two bedrooms, one kitchen-cum-dinning space and one toilet in the ground floor. The office space is not mentioned at all.

The petitioners prior to purchasing the property and before execution of the sale deed, ought to have taken proper information as to whether the property in question has been constructed in accordance with the provision of law or not. Purchasing a property constructed illegally, facing an order of demolition, does not entitle the petitioners to hold on to the same.

The Court does not accept the contention of the petitioners that they were not aware of the demolition proceeding. The said proceeding continued for nearly ten years before the Special Officer (Building) and thereafter before the Municipal Building Tribunal. The petitioners never took steps to be impleaded or add themselves as parties to present their case before the appellate forum.

Assuming that the petitioners were not made aware of the demolition proceedings, even then the petitioners cannot be permitted to enjoy the portion which has been constructed illegally and is facing an order of demolition. If the prayer of the petitioners is accepted, the builders who raise construction in violation of the sanctioned plan, will always try to enjoy the unauthorized portion by adopting all sorts of illegal tactics and resorting to technical issues.

The ploy of the petitioners to retain the portion constructed illegally by converting car parking space to either bedroom or office space cannot be accepted at all.

The order of demolition passed by the Special Officer (Building), Kolkata Municipal Corporation has attained finality and is liable to be complied with at the earliest.

The Court is not inclined to exercise jurisdiction in the matter. The writ petition fails and is hereby dismissed.

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

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

(AMRITA SINHA, J.)