

ML 264
02.02.2023
d.p.

**In The High Court At Calcutta
Constitutional Writ Jurisdiction
Appellate Side**

W.P.A 715 of 2022

**Md. Idris
-versus
The Kolkata Municipal Corporation & Ors.**

**Zianab Tahur.
...For the Petitioner.**

**Mr. Rajarshi Basu,
Mr. Prabir Kumar Ray.
...For the State.**

**Mr. Gopal Chandra Das,
Mr. Abhishek Sikdar,
Ms. Sahili Dey.
...For KMC.**

The petitioner complains of illegal and unauthorized construction at premises no. B/6/H/2, Crematorium Street, Ward No.60, Borough-VI, P.S.- Beniapukur under the jurisdiction of the Kolkata Municipal Corporation.

The petitioner contends that the private respondents have obtained the plan upon misrepresentation and fraud.

It is the further submission that the construction has been made in deviation of the plan sanctioned.

A report has been filed by the Sub-Assistant Engineer (Civil), Assistant Engineer (Civil) and the

Executive Engineer (Civil)/Building Borough-VI, Kolkata Municipal Corporation mentioning that departmental inspection revealed a three storied framed structure on thika tenanted land. There has been an encroachment upon mandatory open spaces.

Notice under Section 401 of the Kolkata Municipal Corporation Act, 1980 was served upon the person responsible on 15th January, 2022 with intimation to the local Police Station. Further round-the-clock police posting was also done under Section 401 (1) of the Kolkata Municipal Corporation Act, 1980 on 20th January, 2022.

From the report filed by the Kolkata Municipal Corporation, it appears that though unauthorized construction was detected way back in January 2022, but even after expiry of one year of detection of unauthorized construction, the Corporation did not take any steps to deal with the same.

The inaction on the part of the Corporation is giving an opportunity to the builder to raise construction and thereafter transfer possession of the same creating third party interest. The inaction on the part of the Corporation cannot be accepted or appreciated by the Court.

The engineers of the Corporation ought to act diligently while handling matters of unauthorized construction, failing which such type of construction will be perpetuated and it will be practically impossible for the authority to prevent and stop the unscrupulous builders from proceeding with such illegal activity. The authority ought to take steps in accordance with law

and not sit tight over complaints even after detection of unauthorized construction.

In view of the above, the present writ petition is disposed of by directing the respondent No.4 to take necessary steps to deal with the unauthorized construction in accordance with law, after giving a reasonable opportunity of hearing to all the necessary parties.

The aforesaid respondent shall ensure that the proceeding to deal with such unauthorized construction is concluded at the earliest, but positively within a period of twelve weeks from the date of communication of a copy of this order.

As regard the submission of the petitioner that the plan has been obtained upon practicing misrepresentation and fraud, it will be open for the petitioner to approach the Corporation for necessary relief.

The writ petition stands disposed of.

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

(Amrita Sinha, J.)