

Item No.9(ml)

In The High Court At Calcutta
Constitutional Writ Jurisdiction
Appellate Side

06.02.2023
Ct-24

WPA 2454 of 2023
Biswajit Dutta & Anr.

v.

The State of West Bengal & Ors.

Mr. Ranjit Kumar Ray
Mr. Ekta Ranjan Shaw
... for the petitioners.

Mr. Piyali Sengupta
... for the respondent no. 6.

The petitioners are aggrieved by the notice under Sections 544 and 546 of the Kolkata Municipal Corporation Act, 1980.

It appears that the said notice was issued on January 19, 2023 intimating the petitioners that the men and agents of the Kolkata Municipal Corporation shall enter the premises no. 2, Durga Das Lane, Ward No. 78, Borough-9 of the Corporation to demolish the unauthorized construction in compliance of the direction passed by the Senior Municipal Magistrate on December 28, 2022 under Section 584 of the Act.

It appears from the judgment dated December 28, 2022 that the Senior Municipal Magistrate directed the Municipal Commissioner or his delegate to demolish the unauthorized, irregular, invalid, illegal and unlawful erection/construction work of the entire building at the subject premises within fifteen days from the date of expiry/elapse of the stipulated period in accordance with

law and to recover the expenses of such demolition from the convicted persons.

It appears from the judgment passed by the Senior Municipal Magistrate that the same was passed after giving reasonable opportunity to the petitioners to defend themselves. The learned Court examined six witnesses and several other documents to arrive at the said finding. The Court below held that the construction was made without obtaining any sanction from the Kolkata Municipal Corporation.

The Court further held that the accused persons undertook the work of unauthorized/illegal construction which is of such a nature that it is endangering human life and property. The offenders did not show any kind of responsibility towards the society and violated the law deliberately. The desperate attitude of the offenders cannot be treated leniently.

It appears that the impugned notice has been issued to comply with the direction passed by the Senior Municipal Magistrate. Had the petitioners been aggrieved by the judgment passed by the Senior Municipal Magistrate, then necessary steps ought to have been taken to assail the same before the appropriate forum and obtain order of stay from the said forum.

At this stage, it does not appear that there has been any error on the part of the Assistant Engineer(C)/Building, Borough-IX in issuing the impugned notice for implementation of the direction passed by the Senior Municipal Magistrate.

In view of the above, no relief can be granted to the petitioners in the instant writ petition.

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.

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(Amrita Sinha, J.)