

Item No.8

In The High Court At Calcutta
Constitutional Writ Jurisdiction
(via video conference)

07.02.2023
Ct-24

WPA 2901 of 2023
Krishna Prasad Shah & Ors.
v.
Kolkata Municipal Corporation & Ors.

Mr. Ejaz Khan
Mr. Pradip Kumar De
Ms. Ananya Adhikary
... for the petitioners.

Mr. Srijan Nayek
Mr. Subhrangsu Panda
... for KMC.

The petitioners claim to be the tenants of premises no. 2, Durga Das Lane, Ward No. 76, Borough-IX of the Kolkata Municipal Corporation.

The petitioners are aggrieved by the notice dated January 19, 2023 issued under Sections 544 and 546 of the Kolkata Municipal Corporation Act, 1980 intimating the landlords of the premises that the men and agents of the Corporation will enter the subject premises on February 7, 2023 for demolishing the unauthorized structure in terms of the direction passed by the Municipal Magistrate on December 28, 2022 under Section 584 of the Kolkata Municipal Corporation Act, 1980.

The petitioner contends that they were not aware of the proceeding initiated by the Corporation against the landlords.

It has been submitted that the landlords, in connivance with the men and agents of the Corporation, are trying to evict the petitioners without the due process of law.

It has been submitted that the petitioners were never issued any notice in connection with the demolition proceeding and accordingly the structure occupied by the tenants ought not to be demolished in the garb of demolition of the unauthorized structure constructed by the landlords.

It appears from records that the notices were issued by the Corporation in favour of the owners of the subject premises who are the private respondents herein. A complete trial was conducted by the Senior Municipal Magistrate and upon hearing the parties and examination of the witnesses, the Senior Municipal Magistrate by a judgment dated December 28, 2022 directed the Municipal Commissioner, Kolkata Municipal Corporation or his delegate to demolish the unauthorized, irregular, invalid, illegal and unlawful erection/construction work of the entire building as the same was constructed without obtaining any sanction from the Corporation.

The impugned notice issued under Sections 544 and 546 of the Act was challenged by the owners of the subject premises, that is the private respondents herein, by filing a separate writ petition being WPA 2454 of 2023 (Biswajit Duta & Anr. vs. State of West Bengal & Ors.). The Court heard the aforesaid writ petition and dismissed the same on February 6, 2023.

The petitioners claiming themselves to be the tenants of the subject premises cannot be heard to contend that they are entitled to occupy the structure which has been held to be constructed in an unauthorized manner by the landlords. The structure constructed unauthorizedly, suffering an order of demolition passed by the Senior Municipal Magistrate, cannot be permitted to stand.

The proceeding before the Municipal Magistrate was a contested one. Opportunity was given to the landlords to demolish the unauthorized structure. The landlords failed to do so and accordingly, the tenants cannot be permitted to occupy and resist demolition of the said structure.

In view of the above, there is no scope for interference in the writ petition.

The writ petition fails and is hereby dismissed.

The Kolkata Municipal Corporation is, however, restrained from demolishing any structure at the subject premises which was constructed in accordance with the sanctioned plan.

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

There is no proof of service upon the private respondents.

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.)