

Item No.19

In The High Court At Calcutta
Constitutional Writ Jurisdiction
Appellate Side

19.05.2023
Ct-24

WPA 5436 of 2023
Shyam Sundar Das

v.

The Kolkata Municipal Corporation & Ors.

Ms. Chandreyi Alam
Ms. Runu Mukherjee
Mr. Subhajit Das
... for the petitioner.

Mr. Prabir Kumar Mitra
Ms. Subhanwita Ghosh
Ms. Ariba Shahab
... for the respondent no. 10.

Mr. Gopal Chandra Das
Ms. Manisha Nath
... for KMC.

A report has been filed by the Assistant Engineer (Civil)/Building and the Executive Engineer (C)/Building, Borough- IV & V dated May 16, 2023 wherefrom it appears that a fresh spot inspection was conducted upon prior notice to the parties. All the parties were present at the time of spot inspection.

It revealed that construction is being made in accordance with the reconstruction plan sanctioned by the Corporation. The provision of Section 410 of the Kolkata Municipal Corporation Act, 1980 read with Rule 3(2) of the Kolkata Municipal Corporation Building Rules, 2009 was invoked at the time of sanction of the building plan. A measurement drawing sheet signed by

all the parties and the attendance sheet are annexed to the report.

Learned advocate representing the petitioner submits that prior to invoking the provision of Section 410 of the Act no opportunity of hearing was granted to the petitioner.

Learned advocate representing the private respondent submits, upon instruction that, construction is being made in accordance with the plan sanctioned and there is no deviation from the said sanctioned plan.

It has been submitted that the petitioner himself is guilty of raising construction without leaving the mandatory side open spaces and now at this stage he ought not to raise objection when the private respondent is making construction.

I have heard the submissions made on behalf of both the parties. It appears that the plan has been sanctioned by invoking the provision of Section 410 of the Act.

Section 410 of the Kolkata Municipal Corporation Act mentions that the Municipal Commissioner may, with a view to promote public or occupier's convenience, safety, privacy or sanitation or for securing conformity with the provision of the Act and the Rules and the Regulations made thereunder by order in writing require the owner of an existing building to make such alternative therein within such period as specified.

The Municipal Commissioner prior to making such order is to afford an opportunity of hearing to the owner to show cause why such an order should not be made.

In the present case, the Municipal Commissioner appears to have invoked the provision of Section 410. By invoking the said provision the Commissioner has sanctioned the building plan in favour of the private respondent by not maintaining the mandatory side open spaces.

In view of the curtailment of the mandatory side open spaces, the right of the adjoining owner gets infringed. Prior to invoking the said provision, an opportunity of hearing ought to have been granted to the adjoining owner i.e. the petitioner in the instance case. If the mandatory side open spaces are not maintained, then the gap and distance between the two premises gets reduced. The same is causing problem to both the petitioner as well as the private respondent.

To find out a solution to the problem faced by both the parties, the Court feels it expedient to grant liberty to the petitioner to file appropriate representation before the Commissioner of the Corporation highlighting his grievances along with supporting documents. In the event, such a representation is made, the same shall be considered by the Municipal Commissioner in accordance with law after giving reasonable opportunity of hearing to all the necessary parties.

A reasoned order shall be passed and communicated to the parties immediately thereafter.

The private respondent will also be at liberty to raise objection, if any, before the Municipal Commissioner, so that both the objections may be decided by the Commissioner in one go.

The consideration shall be made within a period of eight weeks from the date of receipt of the objection.

Learned advocate representing the Kolkata Municipal Corporation submits that there is a provision for delegation of power by the Municipal Commissioner to the other competent authority.

Prayer has been made for permitting the Commissioner to delegate the aforesaid direction for compliance.

The Court is of the opinion that since the spot inspection was conducted by two of the engineers of the concerned borough and as per Section 410 the Municipal Commissioner is the appropriate authority, in this case, let a decision be taken by the Municipal Commissioner himself.

The writ petition stands disposed of.

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

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(Amrita Sinha, J.)