

Item No.14

In The High Court At Calcutta
Constitutional Writ Jurisdiction
Appellate Side

07.07.2023
Ct-24

WPA 8865 of 2023
Praveen Murarka

v.

The Kolkata Municipal Corporation & Ors.

Mr. Rahul Karmakar
Mr. Saurav Guchhait
Ms. Ishita Kundu
... for the petitioner.

Mr. Anand Farmania
Ms. Indu Mouli Banerjee
... for the State.

Mr. Alak Ghosh
Mr. Dwijadas Chakraborty
... for KMC.

Mr. Saptanshu Basu, Sr. adv.
Mr. Ram Anand Agarwal
Ms. Nibedita Pal
Mr. Ananda Gopal Mukherjee
... for the respondent no. 7.

The petitioner alleges illegal and unauthorized construction at the behest of the respondent no. 7 at premises no. 160, N.S.C. Bose Road, Kolkata-700 040, Ward No. 98, Borough-X under the jurisdiction of the Kolkata Municipal Corporation.

The petitioner has claimed himself to be the Managing Trustee of Bhagirath Murarka Charitable Trust.

It has been averred in the writ petition that the Trust is the owner of the subject property. The petitioner has further averred in the writ petition that the

charitable hospital is a Non-Government Society claiming to be working at large especially on health and family welfare sector. The Society is registered under the West Bengal Societies Registration Act, 1961.

The petitioner has averred that the Society has made unauthorized construction at the Trust property and using the same for commercial purpose without the permission of the trustees. Apart from raising such unauthorized construction, the property is being used for objectionable and immoral purpose.

It appears from the documents annexed to the writ petition that the petitioner filed a Public Interest Litigation before this Court being WP 97(W) of 2012 with the same averment of raising illegal construction by the private respondent. The said writ petition stood disposed of by the Hon'ble Division Bench of this Court on December 18, 2012 by directing the Kolkata Municipal Corporation to consider the representation filed by the petitioner and decide the same by passing a reasoned order.

It appears from the said order dated December 18, 2012 that the petitioner was not represented before the Hon'ble Court on the day the matter was taken up for consideration. Learned advocates for the Kolkata Municipal Corporation were, however, present.

In August 2016 a legal representation was filed on behalf of the petitioner requiring answers for certain queries mentioned therein. The same was replied by the SPIO, Kolkata Municipal Corporation by mentioning that as per the office records no information is available.

A notice was served upon the respondent no. 7 alleging that proceeding would be initiated as the private respondent was not paying the lease rent.

In the present writ petition similar prayer has been made by the petitioner seeking direction upon the Corporation to take steps against the illegal construction made by the private respondent.

Learned senior advocate representing the private respondent produces a copy of the communication dated October 28, 2016 issued by the Executive Engineer (Building), Borough-X, Kolkata Municipal Corporation addressed to the President of the respondent no. 7 wherefrom it appears that the respondent no. 7 was directed to meet the Officer on Special Duty (Building) with all valid documents to prove the legality of the existing structure/building situated at the premises.

Learned advocate submits that the representative of the respondent no. 7 visited the concerned authority along with the documents and since thereafter there has been no communication from the end of the Corporation.

It has been submitted that there is no explanation of the delay on the part of the petitioner in filing the present writ petition. The initial writ petition was filed in the year 2012 and for execution of the order passed in the year 2012 the present writ petition has been filed in the year 2023. The private respondent also denies that the petitioner is the sole Managing Trustee of the said Trust.

It has been submitted that there are disputes in between the trustees and the present writ petition has been filed without obtaining any authorization from the other trustees.

Learned advocate representing the Kolkata Municipal Corporation is yet to receive any instruction in the matter.

It appears from the documents annexed to the writ petition that the prayers sought for by the petitioner in the earlier writ petition was already allowed by the Court in December 2012. The petitioner thereafter did not take any positive steps for implementation or execution of the direction passed by the Court.

In the year 2016 a legal representation was filed, thereafter representation was filed in October 2020. The conduct of the petitioner in proceeding with the case raises serious doubt in the mind of the Court with regard to the intention behind filing the present writ petition.

The Court in the earlier occasion already directed the Corporation to decide the representation filed by the petitioner.

The instant writ petition is absolutely vague with regard to the nature and extent of the illegal and unauthorized construction complained of.

The petitioner, claiming to be the owner of the subject property, ought to know about the extent of the alleged unauthorized construction. There is no whisper with regard to the nature of the alleged unauthorized construction.

In view of the above, the allegation of the petitioner that there has been unauthorized construction appears to be a hollow one and cannot be accepted by the Court.

In the event the petitioner files any representation clearly mentioning the details on the unauthorized construction, then the Corporation shall consider the same in accordance with law after giving reasonable opportunity of hearing to the necessary parties.

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.

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(Amrita Sinha, J.)