

Item No.1

In The High Court At Calcutta
Constitutional Writ Jurisdiction
Appellate Side

08.08.2023
Ct-24

WPA 9324 of 2023
Dhiman Bhattacharya & Ors.
v.
The Kolkata Municipal Corporation & Ors.
with
WPO 1251 of 2023(Reference file)

Mr. Asif Hussain
Ms. Labano Pan
Mr. Ramkrishna Chandra
...For the petitioners.

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

Mr. Debjit Mukherjee
Ms. Dipanwita Ganguly
...For KMC.

Mr. Sumitava Chakraborty
...For the petitioner in WPO 1251 of 2023.

Mr. Subhrangsu Panda
Ms. Ina Bhattacharyya
...For KMC in WPO 1251 of 2023.

The matter relates to the unauthorized construction at premises no. B/45/1/H/4, Manasatala Lane, Police Station-Watgunge, Ward No. 77, Borough-IX, Kolkata-700023. The structure standing at the aforesaid premises is suffering an order of demolition.

One Md. Musaib filed a writ petition in the original side being WPO 1251 of 2023 alleging that the order of demolition was passed without affording any opportunity of hearing to him. Md. Musaib claimed himself to be a

lessee in the subject property relying on a Deed of Lease dated February 11, 2022.

The order of demolition was passed on November 7, 2022. The property in question is a thika property.

Dhiman Bhattacharya & Ors., the petitioners in the appellate side matter seek implementation of the order of demolition.

On an earlier occasion in the writ petition filed by Dhiman Bhattacharya, the Court refused to entertain the prayer of Md. Musaib for addition of party and further refused to stay the order of demolition. The Court passed order on February 22, 2023 in WPA 2443 of 2023 with CAN 1 of 2023 and CAN 2 of 2023 specifically recording that February 27, 2023 was the date for initiating demolition proceeding of the unauthorized structure.

Md. Musaib by virtue of the alleged deed of lease dated February 11, 2022 sought for stay of the demolition order which was passed on November 7, 2022.

It appears that the demolition proceeding was concluded by giving opportunity of hearing to one Sadd, Nadim & Ors.

The order of demolition being valid till the date of the demolition, the Court permitted the men and agents of the Corporation to proceed with the demolition. Partial demolition took place on the said date.

The demolition, however, could not be concluded in view of the order passed by the Court in WPO 1251 of

2023 in the matter of Md. Musaib v. The Kolkata Municipal Corporation & Ors.

The Court by order dated June 13, 2023 restrained the Corporation from acting any further with the order of demolition on the ground that there has been violation of the principles of natural justice in not affording opportunity of hearing to Md. Musaib.

The said order is contrary to the order passed by the Court on February 22, 2023 in WPA 2443 of 2023.

Learned advocate for the parties submit that no date of hearing has been fixed by the Corporation after order was passed by the Court on June 13, 2023 in WPO 1251 of 2023.

It appears that when hearing was conducted in the demolition proceeding in June 2022 the construction was upto the roof of the ground floor level. By now the construction has gone upto the 6th floor level. The entire structure is without any sanction.

The concerned Executive Engineer is directed to take prompt necessary steps to deal with the further unauthorized construction at the subject premises in accordance with law after giving reasonable opportunity of hearing to all the necessary parties and to pass a final order in the matter at the earliest but positively within a period of twelve weeks from the date of communication of a copy of this order.

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

As the structure in question appears to have been constructed without any sanctioned plan, accordingly,

the owners/occupiers of the subject premises are restrained from transferring, alienating or creating any third party right in the subject property.

The Officer-in-Charge, Watgunge Police Station is directed to keep strict vigil over the property to ensure that construction in any manner whatsoever is not carried out at the subject premises by any party.

The records of the Corporation produced by Mr. Subhrangsu Panda, learned advocate appearing for the Kolkata Municipal Corporation in the original side matter is perused and returned to the learned advocate.

The writ petition stands disposed of.

Urgent photostat certified copy of this order, if applied for, be given to the parties on usual undertaking.

Sh.

(Amrita Sinha, J.)