

MI- 02.05.2023
235 Ct.15
rkd

W.P.A. 9702 of 2015
(IA NO: CAN 1/2016 (Old No: CAN 4726/2016))

Gopal Krishna Banerjee
-vs-
Kolkata Municipal Corporation & Ors.

Mr. Sakya Sen,
Mr. Sidhartha Sharma,
Mr. Rishav Dutt,
Mr. Rohit Bhattacharjee

....for the petitioner.

Mr. Aniruddha Mitra,
Mr. Anirban Ghosh

....for the respondent no.6.

Mr. Alak Kumar Ghosha,
Mr. Achintya Kumar Banerjee,
Ms. Era Ghose

....for the KMC.

The writ petition is presented, *inter alia*, challenging a notice dated 21st April, 2015 issued by the Deputy Chief Engineer (Building), Borough –VII whereby it was intimated to the petitioner that pursuant to the order of the Learned Building Tribunal, Kolkata Municipal Corporation dated 4th December, 2008 steps were taken for demolishing portion of the structure erected by the petitioner but the work of demolition was not complete therefore petitioner was also informed that according to the Corporation certain portions of the structure of the petitioner are left to be demolished vide order passed by the Building Tribunal.

Mr. Sen, learned counsel representing the

petitioner submits that order of the Learned Municipal Building Tribunal dated 4th December, 2008 was questioned before the coordinate Bench by instituting a writ petition being W.P.O. 271 of 2009 and the coordinate Bench by delivering a judgment dated 2nd September, 2010 upheld the decision of the Building Tribunal and thereby order of the Building Tribunal dated 4th December, 2008 was confirmed. Against that petitioner preferred an intra Court appeal before the Hon'ble Division Bench and the appeal was disposed of vide order dated 14th March, 2011 confirming the order passed by the learned Single Judge.

However, it has been submitted on the petitioner that pursuant to the order passed by the Building Tribunal being confirmed by the Hon'ble Division Bench vide order dated 14th March, 2011 a notice dated 4th July, 2011 was served upon the petitioner for demolition of the unauthorized construction and according to the petitioner demolition work was completed by the Kolkata Municipal Corporation pursuant to the said demolition notice dated 4th July, 2011 and the nothing is left to be demolished.

The impugned notice dated 21st April, 2015 which is at page 191 of the writ petition is not

tenable according to the petitioner since the same was issued four years after the notice of demolition was issued on 4th July, 2011 therefore according to the petitioner such impugned notice dated 21st April, 2015 is afterthought. It has also been contended on behalf of the petitioner that the notice dated 21st April, 2015 is devoid of particulars and the same is vague.

The learned advocate representing the Kolkata Municipal Corporation has drawn attention to the affidavit-in-opposition affirmed on behalf of the Corporation on 18th August, 2015 wherein it has been averred that albeit demolition programme was fixed on 12th July, 2011 but on that date all the illegal constructions could not be demolished due to the reasons beyond control therefore demolition order should be executed in its true letter and spirit.

The learned advocate representing the added respondent no.6 also supports the contention of the Kolkata Municipal Corporation which emanates from the affidavit-in-opposition affirmed on behalf of the Corporation and it has further been submitted that respondent no.6 is the owner of the property in question wherein the petitioner runs the club.

It is also contended that de novo inspection is required to be made on behalf of the Kolkata Municipal Corporation to find out whether the demolition order was truly carried out in order to complete the demolition process but according to estimation of the respondent no.6 the demolition work which was carried out pursuant to the demolition notice dated 4th July, 2011 was not complete.

Having considered the submissions made by the respective parties, it appears that after the order of the Municipal Building Tribunal dated 4th December, 2008 was confirmed by the order of the Hon'ble Division Bench dated 14th March, 2011 a demolition work was carried out vide demolition notice dated 4th July, 2011 by the Kolkata Municipal Corporation. It is true that subsequent notice for completing the demolition work was issued on 21st April, 2015 which is four years after the initial demolition notice was issued by the Corporation after disposal of the appeal by the Hon'ble Division Bench vide notice dated 4th July, 2011.

However, taking into consideration the submissions made on behalf of the parties and the stand which has been expressed by the Kolkata

Municipal Corporation by affirming affidavit-in-opposition it appears that an exercise is required to be carried out in order to find out whether the demolition work could be made complete strictly in terms of demolition sketch plan dated 8th May, 2003 after issuance of demolition notice dated 4th July, 2011 or not.

In order to complete such exercise, this Court finds it apt to direct the Executive Engineer (Civil) (Building Department), Kolkata Municipal Corporation, Borough-VII being the respondent no.4 to inspect the area where according to the Corporation the building in question situates and also take into consideration the demolition sketch plan dated 8th May, 2003 which was prepared by the concerned authority of Corporation in order to find out the extent of unauthorized construction carried out by the petitioner at the material point of time and prepare a report indicating whether the illegal construction was demolished pursuant to the demolition notice dated 4th July, 2011 in its entirety. Such inspection is to be carried out by the respondent no.4 within four weeks from the date of communication of this order by either of the parties upon issuing seven days' notice to the petitioner and the respondent no.6.

After the aforesaid exercise is made complete by the respondent no.4, the respondent no.4 shall pass an order within four weeks thereafter indicating whether the demolition work was complete in the year 2011 pursuant to the demolition notice dated 4th July, 2011 or some portions are left to be demolished.

However, it is made clear that Special Officer (Building) in his order dated 8th May, 2003 had categorically indicated in the concluding portion that the construction which were specified under Part-A can be retained by the petitioner (club) on completion of formalities therefore no further exercise shall be required to be made by the respondent no.4 in order to find out the nature of such construction falling under Part-A.

After taking such decision by the said respondent no.4, the same shall be communicated to the petitioner and the respondent no.6 within a period of two weeks thereafter.

Interim protection granted by the coordinate Bench on this writ petition by passing order dated 14th May, 2015 which was extended till disposal of this writ petition vide order dated 26th November, 2015 however shall continue for a period of four weeks after the receipt of order to be

passed by the respondent no.4 pursuant to the aforesaid direction.

With the aforesaid direction, the writ petition stands disposed of.

Application, if any pending, also stands disposed of.

However, there shall be no order as to costs.

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

(Saugata Bhattacharyya, J.)