

13.09.2023
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AN/Ct. No. 24

WPA 11900 of 2023

**Parveen Zainul wife of Zainul Abedin
versus
The Kolkata Municipal Corporation & Anr.**

Mr. Farooque Ali
Mr. Faizan Md. Zafar

... for the petitioner

Mr. A. K. Biswas

... for the K.M.C.

Ms. Tuli Sinha

... for the State

The petitioner complains of illegal and unauthorized construction at premises no. 11A/17B, Christopher Road, Kolkata-700 014, Ward No. 55, Borough VI of the Kolkata Municipal Corporation.

The allegation is that, construction is being made without a proper sanctioned plan. Objection filed against such unauthorised construction is alleged to be kept pending.

Learned counsel representing the Kolkata Municipal Corporation relies upon a report signed by the engineers of the concerned Borough which mentions that the unauthorised construction was detected and stop work notice was issued. An FIR has been lodged. The Deputy Commissioner of Police (South End Division) was also intimated.

There is no proof of service of notice upon the private respondents.

As it appears from the instruction forwarded by the engineers of the Kolkata Municipal Corporation that the unauthorised construction was detected way back in February, 2022, it was obligatory on the part of the Corporation to take immediate steps to deal with the same. Apart from lodging of the FIR, it does not appear that further steps have been taken in the matter.

Specific provisions are mentioned in the K.M.C. Act, 1980 for dealing with unauthorised construction. The engineers of the Corporation ought not to have remained mute spectators and should have taken the proceedings to its logical conclusion.

It is not expected that the proceeding under Section 400 of the K.M.C. Act will take more than a year to be concluded. If that be so then, by the time the proceeding to deal with the unauthorized construction is concluded, further unauthorized construction will be made flouting the stop work notice issued by the Corporation. In that case, the unauthorized construction can never be demolished and the entire proceeding initiated to deal with the same is reduced to a farce and a mere formality.

The inaction on the part of the engineers of the Corporation implies that they tacitly permitted the private respondents to continue with the unauthorised construction work so that the portions constructed

unauthorizedly may be transferred or alienated and third party rights may be created. Such action of the engineers of the Kolkata Municipal Corporation is viewed extremely seriously by the Court.

The Commissioner, Kolkata Municipal Corporation is directed to take prompt necessary steps to deal with the unauthorised construction which commenced long ago in accordance with law after giving a reasonable opportunity of hearing to all the necessary parties at the earliest but positively within a period of eight weeks from the date of communication of a copy of this order. A reasoned order shall be passed and communicated to the parties immediately thereafter.

The Commissioner is also directed to take necessary steps against the engineers who failed to take prompt steps for concluding the proceedings which is reported to have been initiated long back.

Report filed by the Officer-in-Charge, Beniapukur Police Station is retained with the records. The Officer-in-Charge is directed to keep strict vigil over the property to ensure that no construction in any manner whatsoever is carried on at the subject premises.

The owner/ person responsible for making construction is restrained from transferring, alienating or creating third party right in the subject premises.

The instant writ petition stands **disposed of**.

Urgent certified photostat copy of this order, if applied for, shall be given to the parties as expeditiously as possible on compliance of all necessary formalities.

(Amrita Sinha, J.)