

03. 06.06.2023
bd. Ct.15

W.P.A. 12950 of 2023

Sri Biplab Majumder

-vs-

State of West Bengal & Ors.

Mr. Tapas Kumar Dey

Mr. Ashish Kumar Dutta

Ms. Susmita Mondal ... for the petitioner.

Mr. Prabhat Kr. Singh ... for the respondent nos.
10 to 15.

Mr. S.K.Debnath

Mr. Gopal Chandra Das ... for the KMC.

Mr. Lalit Mohan Mahata ... for the State

Matter relates to alleged illegal construction which has been carried out at 1/2, Nilmoni Mitra Row, Kolkata -700002, by the petitioner. Petitioner has challenged notice under section 544 and 546 of Kolkata Municipal Corporation Act, 1980 whereby petitioner has been intimated by the Executive Engineer (C), Building Department, Borough-I, K.M.C. that on and from 9th June, 2023 entire construction over ground floor which has been decided as unauthorised to be demolished.

Learned advocate for the petitioner submits that such notice of demolition dated 25th May, 2023 is not tenable in view of the order passed by a coordinate Bench on the writ petition being WPA 15519 of 2019 dated 6th February, 2020. Placing reliance upon the said order dated 6th February, 2020 passed by the coordinate Bench it has been submitted that the salient condition attached to the order dated 28th November, 2018 passed by the

Special Officer (Building) K.M.C. was set aside and the concerned authority of KMC was granted leave to impose appropriate conditions for regularisation of deviations made by the petitioner at the aforesaid premises. Therefore, according to the petitioner in stead of imposing conditions in terms of the order dated 6th February, 2020 for regularising the deviations the concerned authority of KMC is not empowered to issue demolition notice dated 25th May, 2023 and such notice needs to be set aside.

Learned advocate representing the KMC has opposed the prayer of the petitioner and has drawn attention of this Court to the relevant portion of the order of the Special Officer (Building) KMC dated 28th November, 2018. According to KMC the order dated 28th November, 2018 of the Special Officer (Building) is comprising of two parts one is relating to the construction made over and above the ground floor of the building which is without any sanctioned plan and the second part of the order is confined to the ground floor of the building which the Special Officer decided can be retained and regularised subject to fulfillment of certain conditions which are stipulated in the order dated 28th November, 2018. It has also been submitted that the order of the coordinate Bench dated 6th February, 2020 relates to regularisation of additions and alterations made in the ground floor of the aforesaid premises. Therefore, according to KMC there is no impediment in taking steps for demolition of constructions made over and above the ground floor.

This Court has heard the learned advocates representing the parties and perused the relevant materials available on record.

Conjoint reading of the order dated 28th November, 2018 passed by the Special Officer (Building), KMC as well as the order of the coordinate Bench dated 6th February, 2020 goes to show that the requirement of furnishing certificate from KMC empanelled structural engineer certifying the stability and the foundation of the impugned constructions are safe and sound and the materials used as well as workmanship are as per the latest edition of NBC of India is one of the conditions which according to the Special Officer (Building) KMC was required to be fulfilled by the petitioner in order to regularise additions and alterations made in the ground floor of the aforesaid premises.

The coordinate Bench while disposing of the previous writ petition set aside the said condition and granted leave to the concerned authority of KMC to impose appropriate conditions. Fact remains imposition of conditions as required in terms of the order of the coordinate Bench dated 6th February, 2020 is confined to ground floor of the building and that cannot be stretched beyond that to take advantage of the order passed by the coordinate Bench dated 6th February, 2020 in order to frustrate the steps taken by the concerned authority of KMC to demolish the other floors which have been erected unauthorisedly over and above the ground floor of the aforesaid premises.

In view of aforesaid discussions it appears that there is no illegality in issuance of notice dated 25th May, 2023 by the concerned authority of KMC under section 544 and 546 of the Kolkata Municipal Corporation Act, 1980. However, it is made clear that while giving effect to such demolition notice dated 25th May, 2023 KMC authorities are restrained from demolishing ground floor of the aforesaid premises since decision has been taken by the Special Officer (Building), KMC that additions and alterations made in the ground floor can be regularised subject to fulfillment of certain conditions and after the order passed by the coordinate Bench on 6th February, 2020 no new conditions have been imposed by the Corporation.

With the aforesaid observations and directions the writ petition stands disposed of. However, there shall be no order as to costs.

Urgent photostat certified copy of the order, if applied for, be given to the parties, upon usual undertakings.

(Saugata Bhattacharyya, J.)