

06.07.2023
Court No. 19
Item No.22
CP

C.O. 1933 of 2022

Smt. Mamata Guha Ray
Vs.
Kolkata Municipal Corporation & ors.

Mr. Sourav Banerjee
Mr. Arnab Dutt
Ms. Labani Dey

....for the petitioner.

Mr. Swapan Kr. Debnath

....for the K.M.C.

Mr. Madan Mohan Roy

.....for the opposite party no. 2.

Mr. I. B. Jha

.....for the opposite party no. 3.

The supplementary affidavit filed today is taken on record.

The revisional application has been filed by the person who had complained about an unauthorized construction, allegedly raised by the opposite party nos. 2 and 3. The dispute arose in respect of a construction on Premises No. 20, Raja Lane, Kolkata – 700009.

Alleging unauthorized construction the petitioner approached the Kolkata Municipal Corporation, opposite party no. 1.

The Special Officer (Building) passed an order of demolition on March 6, 2019. The order is quoted below:

‘Considered the submissions of the authorized representative of the persons responsible as well as the complainant. Also considered the inspection report dt. 18.09.2018. From the inspection report, it is clear that the persons responsible have constructed the building beyond the sanctioned plan. Moreover they have constructed the building in such a way that the repairing works at the rear side of the building of the complainant cannot be carried out staying within her premises i.e. 104, Keshab Chandra Sen Street. This is utter violation of the mandatory open space under Rule 62 of the Building Rule 2009 which cannot be allowed in any circumstances.

- 1) It is ordered that the portion of the building which is encroaching the rear mandatory open space (4.00 M) is to be demolished by the persons responsible (Ps.R.) within 30 days from the date of receipt of this order, failing which the KMC authority will be at liberty to demolish the same at the cost and at the risk of the persons responsible.
- 2) All other deviation from the sanctioned plan can be treated as “minor unauthorized erection or work” as defined in Rule 3(1)(C) of the KMC (Regularization of Building) Regulation 2015 and these deviations are regularized and retained under rule 4 of the Rule 2015 enacted under the KMC Act 1980 subject to the following preconditions:
 - a) That the Ps.R must furnish a structural certificate by a KMC empanelled structural engineer certifying that the structure is stable, safe and sound and the materials used are as per the latest edition of National Building Code of India, within 30 days of receipt of this order.
 - b) That they must pay the fees for retention of the regularized construction within 30 days of receipt of the calculation sheet to be prepared by the respective department of the KMC.
 - c) That they must furnish an affidavit declaring on oath that they will not make any construction whatsoever in the impugned premises without prior sanction from the KMC authority.

D. Sketch may be issued only after compliance of (1) & (2). Non-compliance of the order at (1) will revoke or cancel the order at (2) and the fees deposited will be forfeited.’

Challenging the order, the persons responsible, i.e. the opposite party no. 2 preferred an appeal before the Municipal Building Tribunal vide Building Tribunal Appeal No. 02 of 2020.

The learned tribunal upon consulting the records found that the opinion of the learned Technical Member revealed that a four storeyed building had been constructed. Plan had been sanctioned by the corporation for such construction. It was found that the rear portion of the building at the side of Raja Lane existed in the north-western direction where there was a corporation road/land. The demolition sketch indicated that 4.0 metres open space had been kept on the other side, i.e., east to south direction. Upon tallying the sanction plan and the demolition sketch map, it was not ascertainable on which side such open space was required to be left. The order of the Special Officer (Building) did not mention the same.

The learned tribunal further found that the extent of regularization with proper measurements, identification and dimensions had not been mentioned. Thus, the matter was remanded by setting aside the order of demolition, for a de novo hearing.

Mr. Banerjee, learned advocate for the petitioner, submits that the specific complaint of the

petitioner was that the mandatory open space in the rear side of the building had not been maintained, on account of which, the petitioner was unable to repair her own building.

The learned tribunal, in my opinion, was correct as there appears to be discrepancies in the demolition sketch map and the plan. There was a doubt as to whether, as per the sanction plan, the 4.00 metre open space was required to be kept in the north-western direction where the corporation road existed or on the east to south direction. Moreover, the exact nature of minor deviations with proper measurements and dimensions were also not provided by the Special Officer (Building).

Thus, the order of remand does not either suffer from perversity or material irregularity. The order is well-reasoned and the learned tribunal rightly directed reconsideration of the matter. The proceeding before the Special Officer (Building) would be the first fact finding forum and the facts are required to be ascertained in the light of the findings of the learned Building Tribunal.

Under such circumstances, the revisional application is disposed of with the following directions:-

- a) An engineer of the corporation, in the presence of the parties, shall hold a further

physical inspection in order to identify whether the open spaces as per the sanction plan had been maintained by the opposite party nos. 2 and 3 or not.

- b) The measurement of the building and the measurement of the open spaces around the building shall be taken and verified with the sanction plan in order to ascertain deviation, if any.
- c) The other minor deviations which have been directed to be regularized shall be identified and measured by preparing a sketch map, popularly known as demolition sketch map.
- d) Thereafter, the parties shall respond to such sketch map and the hearing shall proceed afresh. Both the parties will be allowed to adduce all evidence in support of their contentions before the Special Officer (Building).
- e) The order of the Special Officer (Building) shall be specific and the position, nature and dimensions of the constructions which are beyond the plan or in violation of the building rules with regard to maintaining side space, rear space and front space etc., shall be mentioned. The portions to be regularized, shall be specifically mentioned

with measurements, direction, dimensions
etc.

- f) The inspection shall be made within two weeks from the date of communication of this order. Thereafter, the entire proceeding shall be disposed of within a month.

There shall be no order as to costs.

Parties are to act on the server copy of this order.

(Shampa Sarkar, J.)