

Item No.57

In the High Court At Calcutta
Constitutional Writ Jurisdiction
Appellate Side

28.11.2023
Ct-24
A.G.M.

WPA 16294 of 2022

Rama Debnath
v.
The Kolkata Municipal Corporation & Ors.
with
CAN 1 of 2022

Mr. Arun Kumar Mohanty
Ms. Kaberi Sengupta Mohanty
Mr. R.R. Mohanty
Mr. Saheb Shadhukhan
Ms. Komal Shaw
Ms. Snigdha Ghosh
Mr. Shivam Saha
... for the petitioner.

Mr. Uday Shankar Bhattacharya
Ms. Sudeshna Basu Thakur
Ms. Banani Bhattacharya
... for the respondent nos. 5 & 8.

Mr. Lal Mohan Basu
... for the State.

Mr. Fazlul Haque
Mrs. Suranjana De Sarkar
... For the K.M.C.

The petitioner complains of illegal and unauthorised construction at 59A, Kumar Para Lane, Ward No. 91, Borough-X of the Kolkata Municipal Corporation.

Allegation is that construction is being made without obtaining any sanction plan.

In the garb of conducting repairs to the existing structures, the private respondents are raising illegal and unauthorised construction.

The petitioner complains that despite objection filed by the Kolkata Municipal Corporation, the same is not taken up for consideration.

The private respondents have entered appearance in the present writ petition and have filed an application seeking appropriate order. The order sought for by the private respondents is to permit them to make necessary repairs at the subject premises.

The private respondents rely upon the application made before the Executive Engineer of the concerned Borough seeking permission for making the repairs.

Learned advocate representing the Corporation has received instruction from the Sub Assistant Engineer (Civil) and Assistant Engineer (Civil)/Building, Borough-X signed on 23rd November, 2023 mentioning that on receipt of the writ petition, the department inspected the site and found that two brick built tin shed structure along with iron pipe and another brick work at plinth level has been constructed by the person(s) responsible without any sanction plan. The person(s) responsible who have been identified for raising the construction are Manotosh Halder, Babai Halder and Tapan Kumar Das and others.

The department issued stop work notice under Section 401 of the KMC Act, 1980 upon the persons responsible on 6th August, 2022 with intimation to Kasba Police Station. Demolition proceeding under Section 400 of the KMC Act has been initiated.

On a perusal of the report filed by the Corporation, it appears that unauthorised construction has indeed been detected. The submission of the private respondents that there is no unauthorised construction, accordingly, fails.

The Corporation issued stop work notice way back on 6th August, 2022 but thereafter did not take any step to follow up the same. The present writ petition has been filed in July 2022 and till today there is no report from the Corporation with regard to the steps taken to deal with the unauthorised construction.

The unauthorised construction cannot be permitted to remain and immediate steps are liable to be taken to deal with the same.

In view of the above, the instant writ petition is disposed of by directing the Executive Engineer, Borough- X to take proper necessary steps to deal with the unauthorised construction in accordance with law at the earliest but positively within a period of twelve weeks from the date of communication of this order.

As unauthorised construction has been detected, the private respondents are restrained from raising any further construction over the subject premises.

The private respondents are further restrained from transferring/alienating or handing over possession of the subject premises in favour of third party.

The Officer-in-Charge, Kasba Police Station is directed to keep strict vigil over the site and ensure that no third party rights and no construction in any manner whatsoever is carried out at the subject premises.

The writ petition stands disposed of.

Urgent certified photocopy of this order, if applied for, be supplied to the parties expeditiously on compliance of usual legal formalities.

(Amrita Sinha, J.)