

Item No.06

In The High Court At Calcutta
Constitutional Writ Jurisdiction
Appellate Side

17.07.2023
Ct-24
AGM

WPA 16583 of 2023
Saud Ahmed

v.

Kolkata Municipal Corporation & Ors.

Mr. Debjit Mukherjee
Mr. A. Z. Mondal
Ms. Shahnaz Parveen
Mr. Avirup Mondan
... for the petitioner.

Mr. Swapan Kumar Debnath
... for the KMC.

The matter relates to unauthorised construction carried on at the instance of the petitioner at premises no. B/6/H/4/1, Chamru Khansama Lane, Ward No. 65, Borough – VII under the jurisdiction of KMC.

Two additional floors have been constructed without obtaining any sanction from the KMC.

A complaint lodged by a private party but the matter was initially not considered by the Corporation. The private party approached this Court by filing a writ petition being WPA 4042 of 2021 (Sk. Kamal-Vs-The State of West Bengal & Ors).

The Court passed order on 9th December, 2021 and laid down the procedure according to which the unauthorised construction is required to be dealt with.

The petitioner submits that no notice of hearing was given to him. The petitioner was not aware of any

proceeding initiated by the Corporation for dealing with the alleged unauthorised construction.

The immediate cause of action for filing the instant writ petition is a notice under Sections 544 and 546 of the Kolkata Municipal Corporation Act, 1980 dated 7th July, 2023 intimating the petitioner that the assistants and workmen of the Corporation will enter the subject premises on 17th July, 2023 for demolition of the unauthorised construction in terms of the order passed by the Special Officer on 12th December, 2022.

The petitioner submits that as he was not aware of the order of demolition, accordingly, he could not take steps for preferring the statutory appeal.

Prayer has been made for a direction upon the Corporation for supplying certified copy of the order of demolition to allow the petitioner to prefer statutory appeal.

Learned advocate representing the KMC has obtained instruction from the engineers of the Corporation. It appears therefrom that the petitioner was put on notice with regard to the proceeding under Section 400(1) of the KMC Act, 1980. The petitioner duly appeared in the hearing and put his signature in the attendant sheet on 27th June, 2022.

The petitioner appears to be all along aware of all the proceeding which was initiated by the Corporation to deal with the unauthorised construction which was conducted strictly in accordance with the procedure laid down by this Hon'ble Court in the writ petition being WPA 4042 of 2021. It does not appear that there has been any infirmity in the proceeding of the Corporation.

The petitioner has made an absolute false averment in the writ petition mentioning that he was not aware of the proceeding. The submission of the petitioner is found to be totally false and incorrect. The

documents produced by the learned advocate representing the Corporation evidences the fact that the petitioner attended the hearing on the scheduled date and made necessary submission.

The Court is not inclined to exercise jurisdiction in the matter. The Corporation shall proceed to act in accordance with the provisions of law.

The writ petition stands dismissed with costs assessed at Rs. 10,000/- to be paid by the petitioner in the office of the High Court Legal Services Authority by 20th July, 2023.

In the event the petitioner applies for obtaining certified copy of this order, necessary steps shall be taken in the matter to supply the same.

List the matter on 25th July, 2023 to ensure compliance of the payment of costs by the petitioner.

Instruction forwarded by Executive Engineer (Civil)/ Building be retained with the records.

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

(Amrita Sinha, J.)