

Item No.38

In The High Court At Calcutta
Constitutional Writ Jurisdiction
Appellate Side

18.07.2023
Ct-24
AGM

WPA 16808 of 2023
Buddhadev Kundu

v.

The Kolkata Municipal Corporation & Ors.

Mr. Gopal Chandra Das
Mr. Mahaboob Ahmed
... for the petitioner.

Ms. Tuli Sinha
... For the State.

Mr. Gurudas Mitra
Mr. Swapan Kumar Debnath
... For the KMC.

Affidavit-of-service filed in Court today be kept with the records.

The matter relates to certain unauthorised construction at premises no. 138A, Ananda Palit Road, Ward No. 55, Borough – VI under jurisdiction of the Kolkata Municipal Corporation.

The engineers of the KMC detected unauthorised construction at the subject premises. From the impugned notice issued under Section 544 and 546 of the KMC Act, 1980 dated 11th July, 2023 it appears that an order of demolition was passed on 15th June, 2023.

Specific case of the petitioner is that no opportunity of hearing was given to the petitioner in the

proceeding initiated by the Corporation to deal with the unauthorised construction.

The petitioner complains that he is not made aware of the order of demolition dated 15th June, 2023 and the said order was not communicated to him.

From the impugned notice issued under Sections 544 and 546 of the KMC Act, 1980, the petitioner came to learn that the assistants and workmen of the Corporation will enter the subject premises on 18th July, 2023 to demolish the unauthorised construction.

The petitioner intends to prefer statutory appeal against the order of demolition.

Learned advocate representing the KMC produces a bunch of documents wherefrom it appears that notice under Section 400 (1) of the KMC Act, 1980 was issued in respect of one Arun Adddy and Buddhadev Kundu, the petitioner herein.

Postal receipt shows that the notice was dispatched in favour of Arun Auddy but the petitioner herein was not put on notice.

Submission of the learned advocate representing the Corporation is that as the aforesaid Arun Auddy and Buddhadev Kundu both filed a single power of attorney before the KMC, accordingly, notice was issued only in respect of one and not in favour of both.

It has been submitted that the petitioner was all along aware of the demolition proceeding. Neither the petitioner nor the other power of attorney holder, that is, Arun Auddy appeared in the hearing.

The complainant was all along present in the hearing. Unauthorised construction was detected and accordingly order of demolition has been passed.

Learned advocate representing the Corporation also raises the issue of maintainability of the writ petition at the instance of the petitioner herein. It has

been submitted that the property in question was recorded in favour of one Tapas Majumdar. The owner of the property has not approached this Court for relief. The petitioner, being one of the power of attorney holders, has filed the present writ petition.

From the submissions made on behalf of the parties it appears that the Corporation initiated proceeding for dealing with the unauthorised construction and issued notice in favour of two persons, but for reasons best known to the authority, notice was dispatched only in favour of one of the noticees but not to the other.

When a notice is prepared and addressed to two persons, then the Corporation ought to have dispatched notice in respect of both; otherwise, the person who has not been put on notice may come forward and make submission alleging contravention of the provision of natural justice.

The notice of hearing ought to have been issued to both the addresses.

Admittedly, no notice, opportunity of hearing was granted to the petitioner.

The petitioner has disclosed his intention to challenge the order of demolition before the statutory appellate forum. As the petitioner was not aware of the proceeding and was not communicated the order of demolition, accordingly, the petitioner did not have any opportunity to approach the appellate forum.

In view of the above, the Executive Engineer (Civil)/Building Department, Borough – VI is restrained from giving any affect or further effect to the impugned notice under Sections 544 and 546 of the KMC Act, 1980 till 30th November, 2023 or until further order whichever is earlier.

In the event the petitioner fails to obtain an order of stay/setting aside/modification of order of demolition dated 15th June, 2023 within the time as stipulated above, then it will be open for the Corporation to proceed with the demolition work.

From the documents annexed to the writ petition, it appears that an application for obtaining the certified copy of the order of demolition dated 15th June, 2023 was made by the petitioner on 22nd June, 2023. The same is yet to be supplied.

The Executive Engineer of the said Borough is directed to immediately supply the certified copy of the order of demolition dated 15th June, 2023 upon payment of the requisite fees.

As the subject property is suffering an order of demolition, accordingly, the petitioner is restrained from making any construction at the subject premises and is further restrained from transferring, alienating the subject property in favour of third parties till the matter is finally adjudicated by the appellate forum.

The Officer-in-Charge, Entally P.S. is directed to keep strict vigil over the property to ensure that no construction in any manner whatsoever takes place at the subject property and the property in question is not transferred/handed over or alienated in favour of third parties.

The writ petition stands disposed of.

Report filed by the Officer-in-charge, Entally P.S. dated 18th July, 2023 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.)