

Item No.5

In the High Court At Calcutta
Constitutional Writ Jurisdiction
Appellate Side

04.09.2023
Ct-24

WPA 21355 of 2023
Subrata Maity & Anr.

v.

The Kolkata Municipal Corporation & Ors.

Mr. Tanmoy Mukherjee
Mr. Anindya Sunddar Das
Mr. Shaunak Ghosh
Mr. Madhab Kumar Roy Chowdhury
Ms. Rekha Shaw
... for the petitioners.

Mr. Srijan Nayak
Ms. Rituparna Moitra
... for KMC.

Learned advocate representing the Kolkata Municipal Corporation has produced the copy of the order of demolition passed by the Executive Engineer (C)/Building, Borough-X as far as back on January 5, 2022.

It appears therefrom that the demolition proceeding was conducted and concluded after giving reasonable opportunity of hearing to the person responsible for making construction on several occasions. The person responsible failed to satisfy the authority concerned with regard to the unauthorized construction of the one storied RCC framed structure, building area of which is 205 sq.m approximately, which was being carried on without obtaining any sanction.

The Executive Engineer was of the view that the structure was made contrary to the sanction and in contravention of the provision of the Kolkata Municipal Corporation Act, the Rules & Regulations made thereunder.

The demolition order mentions that if the structure is permitted to be retained, it may endanger or is likely to endanger human life or property of the Corporation whereupon the water supply, drainage or sewerage or road traffic may be disrupted and is also likely to cause fire hazard. The Executive Engineer passed order for demolition of the said construction.

Being aggrieved by the order of demolition, the person aggrieved preferred an appeal before the statutory Building Tribunal being BT Appeal No. 21 of 2022. No order has yet been passed setting aside/modifying or staying operation of the order of demolition.

Learned advocate representing the petitioners submits that the petitioners purchased the property on payment of valuable consideration by a registered conveyance on April 9, 2023. The petitioners were not aware of the order of demolition that has been passed in respect of the subject premises.

Prayer has been made to seek retention of the subject structure in accordance with the circular of the Corporation.

It appears from the submissions made on behalf of the petitioners that they were not aware of the order of demolition. Fact remains that the person responsible for making unauthorized construction preferred statutory appeal but failed to obtain any order of stay and or

cancellation of the order of demolition. The order of demolition is pending execution for a long period of time.

The prayer of the petitioners seeking retention cannot be considered in view of the observation made in the order of demolition that the retention may not be possible in the present case as it may endanger public life and property.

The petitioners being subsequent purchasers of a structure which was held to be unauthorized and is suffering an order of demolition cannot and ought not to be permitted to stall the demolition process at such a belated stage. It was the duty and requirement of the petitioners to check all documents of the subject structure prior to executing the deed of conveyance.

It is absolutely impermissible to injunct the Corporation from proceeding with the demolition work of a structure which was held to be unauthorized long back, that too, at the instance of a subsequent purchaser. Execution of the deed of sale will no way legalize or regularize the unauthorized construction. Deferring the process of demolition will further delay the matter and further third party rights may be created to hold on to the unauthorized construction.

If the petitioners feel that they were cheated by the seller of the structure for which they have suffered pecuniary loss on account of purchase of the subject property, it will be open for the petitioners to seek compensation in accordance with law before the appropriate forum, if so advised.

No relief can be granted to the petitioners in the instant writ petition.

The writ petition fails and is hereby dismissed. The interim order that was passed in the matter stands vacated.

The Corporation is directed to proceed with the work of demolition.

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

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(Amrita Sinha, J.)