

W.P.A. 19925 of 2012

Dr. Suryya Pada Podder

Vs.

The Kolkata Municipal Corporation & Ors.

Mr. Rajib Ganguly

... for the petitioner

Mr. Barin Banerjee

Mr. Swapan Kumar Debnath

...for the KMC

In the writ petition order dated 23rd March, 2005 passed by the Special Officer (Building) and the order of the Appellate Authority dated 8th December, 2011 passed on the appeal being preferred by the petitioner against the aforesaid order of Special Officer (Building) are under challenge. While considering the validity and legality of the two orders dated 23rd March, 2005 passed by the Special Officer (Building) and dated 8th December, 2011 of the Appellate Authority this Court found that Special Officer (Building) and the Appellate Authority placed reliance on the inspection report dated 16th January, 2004. On perusal of the impugned orders it also appears that the concerned authority of Kolkata Municipal Corporation inspected the locale where unauthorized constructions were made deviating the sanctioned plan and prepared a report dated 16th January, 2004 which formed the basis of formation of opinion as reflected from the orders dated 23rd March,

2005 and 8th December, 2011 passed against the petitioner.

On 17th July, 2023 while hearing the writ petition this Court found it necessary to examine the said inspection report dated 16th January, 2004 and directed the concerned authority of Kolkata Municipal Corporation to produce inspection report before this Court. Subsequently, matter was taken up for consideration on 31st July, 2023 and 24th August, 2023 when accommodation was prayed for on behalf of the corporation since it was submitted before this Court by the learned advocate representing the corporation that the inspection report dated 16th January, 2004 was not available on the records maintained in the office of the corporation.

Today, matter is taken up for consideration when Director General (Building), Mr. Ujjwal Kumar Sarkar is personally present before this Court and a report dated 8th September, 2023 has been placed which has been signed by the several officers of the concerned department of the corporation including Director General (Building). On perusal of such report dated 8th September, 2023 it appears that in spite of best endeavour made by the concerned authority of the corporation the inspection report dated 16th January, 2004 could not be traced out.

Considering the contents of the report dated 8th September, 2023 it has also been submitted on behalf of the corporation by the learned advocate that let direction be given upon the Director General (Building) for consideration of the issue afresh after granting opportunity of hearing to the petitioner and respondent no. 4.

In view of aforesaid situation the orders dated 23rd March, 2005 passed by the Special Officer (Building) and 8th December, 2011 passed by the Appellate Authority are set aside since those orders are based on the inspection report dated 16th January, 2004 and the same is not traceable as it has been submitted by the Director General (Building), KMC who is personally present before this Court today.

The Director General (Building), KMC is directed to revisit the issue and pass a reasoned order after granting opportunity of hearing to the petitioner and respondent no. 4.

It is made clear that at least seven days' notice shall be given to the parties before hearing the matter.

Director General (Building) shall also be at liberty to inspect the locale being assisted by responsible officers of concerned department of the corporation prior to taking final decision on the issue of unauthorized construction as alleged against the petitioner. The reasoned decision shall be passed by the Director

General (Building) within 12 (twelve) weeks from date and the same shall be communicated to the parties within 1 (one) week thereafter.

The report dated 8th September, 2023 signed by several officers of concerned department of KMC including Director General (Building) is taken on record.

With the aforesaid direction, the writ petition stands disposed of.

There shall be no order as to costs.

Urgent photostat certified copy of the order, if applied for, be given to the parties, upon usual undertakings.

(Saugata Bhattacharyya, J.)