

Item No.12

In the High Court At Calcutta
Constitutional Writ Jurisdiction
Appellate Side

06.10.2023
Ct-24

WPA 23897 of 2023
Kashinath Guchait

v.

The Kolkata Municipal Corporation & Ors.

Mr. Subhabrata Datta
Mr. Soumava Chakraborty
Mr. Aranya Saha
... for the petitioner.

Ms. Kakali Samajpati
Ms. Kakali Naskar
... for the State.

Mr. Subhrangsu Panda
Ms. Ina Bhattacharyya
... for KMC.

The matter relates to unauthorized construction at premises no. 29/A/H/9, Chaulpatty Road, Ward No. 034, Borough-III under the jurisdiction of the Kolkata Municipal Corporation.

The petitioner claims to be a thika tenant of the subject property.

It has been submitted that mere repairing work was made at the subject structure and no new construction was carried out. Without any notice the Corporation started the work of demolition of the construction made.

The petitioner relies upon various provisions of the West Bengal Thika Tenancy (Acquisition & Regulation) Act, 2001 and the rules framed thereunder as well as the provisions of the Kolkata Municipal Corporation Act,

1980 and the various Circulars of the Corporation with regard to thika tenancies.

Special stress has been led on the Office Circular No. 7/20-21 dated December 16, 2020 issued by the Director General (Building), Kolkata Municipal Corporation.

It has been submitted that part demolition has already been carried out and prayer has been made for restraining the Corporation from further demolition.

Learned advocate representing the Corporation relies upon the instruction forwarded by the engineers of the Corporation signed on August 8, 2023 wherefrom it appears that departmental inspection revealed unauthorized construction of four storied RCC framed structure. The total unauthorizedly constructed area is 392 sq.m approximately and is fully vacant.

Stop work notice under Section 401 of the Kolkata Municipal Corporation Act, 1980 was served upon the person responsible on July 28, 2023 with intimation to the local police station. The file was forwarded to the higher authority on August 8, 2023. The Corporation has invoked provision of 400(8) of the Kolkata Municipal Corporation Act, 1980 as per the approval of the Mayor on September 8, 2023.

From the submission made on behalf of both the parties and upon perusal of the materials on record it appears that construction is being made in deviation of the provisions of the Kolkata Municipal Corporation Act, 1980. There is no sanction at all for raising such construction.

According to the provisions of the Kolkata Municipal Corporation Act, 1980, construction can be made only upon obtaining sanction and not prior thereto.

In the present case, the construction has been made without any sanction at all. The matter was placed in the meeting of the Mayor-in-Council on August 21, 2023 and the Mayor has approved the proposal for invoking the provision of Section 400(8) of the Act.

There is no doubt with regard to the fact that the property in question is a thika property. Neither any permission was obtained from the Thika Controller nor the Corporation prior to raising construction. The person responsible, absolutely contrary to the provisions of law, started raising construction of four storied RCC structure without following the engineering norms. The side spaces as required to be maintained have been infringed on all the sides.

The Court is not inclined to come to the aid of a builder who raises construction without a valid sanctioned plan. If any leniency or mercy is shown to these type of builders, then the menace of unauthorized construction cannot be stopped.

Any interference in the present case will give a premium to the dishonest and unscrupulous builders who raise construction without following the provisions of law. Misplaced sympathy causes injustice to the society. The illegal act of construction without any sanction ought not to be showed any mercy and should dealt with an iron hand.

As of now the construction in question is still vacant. Any delay in demolition of the subject structure may give rise to third party rights.

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

The writ petition fails and is hereby dismissed.

The Corporation is directed to proceed with the demolition work and conclude the same at the earliest.

The Beliaghata Police Station is directed to ensure that construction in any manner whatsoever is not carried out at the subject premises and no third party interest is created over the subject premises. The police shall render all necessary help and assistance to the men and agents of the Corporation at the time of implementing the order of demolition, if sought for.

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

Sh

(Amrita Sinha, J.)