

Item No.9 &10

In The High Court At Calcutta
Constitutional Writ Jurisdiction
Appellate Side

17.02.2023
Ct-24

WPA 8599 of 2020
Rajendra Prasad Shaw & Ors.
v.
The Kolkata Municipal Corporation & Ors.
with
WPA 1655 of 2020
Jitendra Kumar Singh
v.
The Kolkata Municipal Corporation & Ors.

Mr. Jitendra Kumar Singh
... petitioner in person
in WPA 1655 of 2020 and
respondent no. 8 in
WPA 8599 of 2020.

Mr. Ranajit Chatterjee
Mr. Tanushree Dasgupta
... for KMC in WPA 8599 of 2020

Mr. Victor Chatterjee
Mr. Barnamoy Basak
... for the petitioners in WPA 8599 of 2020
& respondent nos. 5 to 8 in WPA 1655 of 2020.

Mr. Ranajit Chatterjee
Mr. Subhrangshu Panda
... for KMC in WPA 1655 of 2020

Mr. Bipin Ghosh
... for the State in WPA 8599 of 2020.

The petitioner, Jitendra Kumar Singh seeks
implementation of the order of demolition passed by the
Special Officer (Building), Kolkata Municipal Corporation
dated July 30, 2019.

It has been submitted that partial demolition of the unauthorized structure has already been executed by the Corporation at the time of implementation of the aforesaid order of demolition.

By the said order the Special Officer directed the persons responsible i.e. Rajendra Prasad Shaw & others to demolish the entire unauthorized construction of G+4 storied building at 49/5/H/97, Karl Marx Sarani within thirty days from the date of receipt of the order, failing which the authority will be at liberty to demolish the same and recover the cost of demolition from the persons responsible.

The aforesaid order records that despite repeated opportunities none appeared on behalf of the persons responsible at the time of hearing.

It is the specific case of the persons responsible i.e. Rajendra Prasad Shaw & others that they were not served with the hearing notice. Copy of the demolition order was also not served upon Rajendra Prasad Shaw & others.

From the affidavit-in-opposition filed on behalf of the Kolkata Municipal Corporation it appears that notice of hearing was issued in favour of all the interested persons including Rajendra Prasad Shaw & others at 49/5/H/97, Karl Marx Sarani. The specific contention of Rajendra Prasad Shaw & others is that they do not reside at the subject premises and the address where they reside is appearing in the cause title of the writ petition filed by Rajendra Prasad Shaw & others (WPA 8599 of 2020).

The notice of hearing annexed to the affidavit in opposition filed by the Corporation addressed to the

parties mentions the writ petition number in connection to which the hearing was conducted. The said writ petition being WP 2415(W) of 2019 was filed by Jitendra Kumar Singh. The address of the private respondents mentioned in the writ petition filed by Jitendra Kumar Singh is 49/5/H/97, Karl Marx Sarani.

The Corporation contends that they were not aware of any other address of Rajendra Prasad Shaw & others and accordingly notice was served at the address mentioned in the cause title of the said writ petition.

Learned advocate representing Rajendra Prasad Shaw & others admits that the entire construction i.e. G+4 storied building was made without obtaining any sanction plan. After the construction was made, an application was filed for regularization of the said construction.

A writ petition has been filed by Rajendra Prasad Shaw & others seeking cancellation of the order of demolition dated July 30, 2019 as the same was passed without affording reasonable opportunity of hearing.

It is evident from the submissions made on behalf of the parties that the construction had been made without obtaining any sanction. Nevertheless, an opportunity of hearing ought to be given to the persons responsible prior to passing any order under Section 400 of the Kolkata Municipal Corporation Act, 1980. The statute contemplates an opportunity of hearing to be given to the persons responsible.

As it is the specific contention of Rajendra Prasad Shaw & others that they could not represent themselves at the time of hearing as they did not receive any notice of hearing, accordingly, for ends of justice the order of

demolition is set aside. The Special Officer (Building) is directed to rehear the matter after giving reasonable opportunity of hearing to all the parties in accordance with law at the earliest, but positively within a period of twelve weeks from the date of communication of a copy of this order.

The Special Officer (Building) shall pass a fresh reasoned order and communicate the same to the parties immediately thereafter.

Notice of hearing shall be served upon Rajendra Prasad Shaw & others at 47/A, Bama Charan Roy Road, Jai Sree More, Behala, Kolkata-700034.

Both the writ petitions stand disposed of.

Supplementary affidavit filed by Jitendra Kumar Singh in Court today is taken on record.

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.)