

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Original Side

Present :- Hon'ble Justice Amrita Sinha

WPO 906 of 2022

DR. MRS. SARMILA CHANDRA
VS.
THE KOLKATA MUNICIPAL CORPORATION & ORS.

For the writ petitioners	:-	Mr. Raghunath Chakraborty, Adv.
For the KMC	:-	Mr. Biswajit Mukherjee, Adv. Ms. Manisha Nath, Adv.
For the State	:-	Mr. Naba Kumar Das, Adv.
Hearing concluded on	:-	09.02.2023
Judgment on	:-	09.02.2023

Amrita Sinha, J.:-

The Court:-The writ petition is in connection with illegal and unauthorized construction at 66, Biplabi Rash Behari Bose Road, Kolkata-700 001.

According to the petitioner, there has been massive unauthorized construction at the subject premises. In an earlier writ petition filed by the petitioner being WPO No.161 of 2021, the Court, by order dated 13.04.2021, directed the men and agents of the Kolkata Municipal Corporation to conduct an inspection of the premises upon prior notice to all the parties. If any unauthorized construction is detected, then necessary steps were to be taken to deal with the same.

Report of inspection conducted in compliance of the aforesaid order mentions that the department observed that there is an existing four storied structure, old enough and no new construction is in progress. The said report has been signed by three engineers of the Corporation on 3rd November, 2021.

A further writ petition was filed by the petitioner being WPO No.1150 of 2021 challenging the said report and alleging that the same does not disclose any unauthorized construction complained of.

The private respondent, who was impleaded in the said writ petition, denied taking responsibility of the alleged construction. The Court was of the opinion that the inspection report dated 3rd November, 2021 is of no consequence and by order dated 24th November, 2021 directed further inspection to be conducted upon notice and the proceeding to reach its logical conclusion.

Further inspection was conducted upon notice. The inspection report signed by the Executive Engineer [Civil]/Building Department on 24th December, 2021 mentions that the inspection revealed an existing partly five and partly six storied, old building at the site and no new construction was detected. The building is fully occupied and used for commercial purpose in a congested area.

The petitioner refers to the schedule of a deed of lease executed on 04.02.1982 in respect of the said property wherein the property is described as a two storied building with open, vacant third floor roof.

The learned advocate appearing on behalf of the petitioner submits that in the year 1982 when the lease deed was executed, the structure was a two storied building with vacant third floor roof whereas on 03.11.2021 when the building was inspected, it was found that there is an existing four storied structure with no new construction work. Inspection report dated 24th December, 2021 reveals that the structure is partly five and partly six storied.

The petitioner contends that in the absence of proper sanctioned plan, no construction can be said to be authorized and irrespective of the fact that the construction is an old one, the same is liable to be demolished in terms of the Kolkata Municipal Corporation Act, 1980.

The petitioner relies upon the provisions of Sections 29K, 40, 400 and 402 of the Act. Reference has also been made to the judgment delivered by this Court in *Mohanlal Mitra & Anr. Vs. Kolkata Municipal Corporation*, reported in 2005(3) CHN 282 paragraphs 17 and 19, wherein the Court held that under the Kolkata Municipal Corporation Act there is no prescribed period of limitation with regard to taking action against unauthorized construction by the Kolkata Municipal

Corporation. Construction of an additional floor without any sanctioned plan cannot be termed as mere deviation of minor nature.

Learned advocate representing the Kolkata Municipal Corporation submits that the occupiers of the subject premises is not at all cooperating in the process of enquiry and the department does not have any records of the sanctioned plan of the subject premises. The construction in question is an old one and fully occupied. The Corporation is not in a position to take a decision as to whether the said construction is an authorized one or not. Notices were affixed at various places in the walls of the subject building seeking details of the construction made, but there has been no response from any person.

It has been submitted that an initial writ petition was filed by the petitioner seeking regularization of the construction made but thereafter the said writ petition stood withdrawn by the petitioner.

Learned advocate for the petitioner has clarified that the petitioner never sought for regularization of any structure made unauthorizedly, but at the same time, being the co-owners of the subject premises, the petitioner does not take responsibility of any structure that has been constructed unauthorizedly, without obtaining any sanction from the Corporation.

From the inspection report annexed to the writ petition, it appears that the engineers of the Corporation inspected the site on 07.09.2021 and again on 22.09.2021 but failed to detect any new construction work in the existing four storied building. In the inspection report signed by the Executive Engineer on 24.12.2021, it has been mentioned that the structure in question is partly five and partly six storied. The engineers of the Corporation failed to detect that between September, 2021 and December, 2021 the existing four storied structure has been raised to partly five and partly six storied structure.

It is quite surprising that two additional floors were constructed within a short span of three months only and even then the engineers of the Corporation failed to detect any construction work. It has been submitted in Court that the Corporation

does not have any records of the sanctioned plan of the building. None of the occupiers have come forward to take responsibility of the construction that has been made. The person who was impleaded as private respondent in the earlier writ petition filed by the petitioner being WPO No.1150 of 2021 has clearly shirked off responsibility with regard to the alleged construction and submitted that he has been unnecessarily dragged in the proceeding.

According to the petitioner, the person who was impleaded as respondent no.9 in the earlier proceeding, is the person responsible for making construction but as he openly refused to accept liability of the construction made, the petitioner did not implead him as party in the present proceeding. Deed annexed by the petitioner of the year 1982 mentions about a two storied building with vacant roof in the third floor.

The said structure is presently partly five and partly six storied building. The Kolkata Municipal Corporation Act came into effect on 4th January, 1984 and this Court in Mohanlal Mitra [supra] clearly laid down that in the KMC Act, 1980 there is no prescribed time period for taking steps against unauthorized construction by the Corporation. The fact that no plan has been found in the records maintained by the Corporation in respect of the subject property suggests that no plan was sanctioned for making construction at the subject premises after the execution of the deed of lease in 1982.

As the Corporation asserts that there is no sanctioned plan in respect of the subject premises, then steps ought to have been taken by the Corporation to demolish the portion constructed without obtaining sanction from the Corporation. The Corporation is not required to bother with the fact as to whether the structure is an old one or not. Back to back inspection reports of the Kolkata Municipal Corporation suggest that the construction took place in the year 2021. The said construction can certainly not be said to be an old one. Any construction which has been made without obtaining sanction is liable to be demolished.

In view of the above, the instant writ petition is disposed of by directing the Municipal Commissioner or his delegate the Director General of Building to take steps for demolition of any unauthorized construction at the subject premises without being swayed by the fact that the unauthorized portions are occupied and may have become old due to passage of time.

The Deputy Commissioner of Police, Kolkata and the Officer-in-Charge, Burrabazar Police Station are directed to take steps for rendering all necessary assistance to the men and agents of the Kolkata Municipal Corporation at the time of demolition of the unauthorized construction, if sought for.

Steps shall be taken in the matter in accordance with law, at the earliest, but positively within a period of twelve weeks from the date of communication of this order.

The notice of demolition shall be addressed to the owner of the property and in favour of the person(s) whose names are recorded in the Assessment/Inspection Book maintained by the Kolkata Municipal Corporation.

Cost of demolition shall be recovered in accordance with the provisions of Section 400(7) of the Kolkata Municipal Corporation Act, 1980.

Report dated 17.02.2022 filed by the Officer-in-Charge, Burrabazar Police Station in Court today is retained with the record.

Affidavit-in-opposition and affidavit-in-reply thereto filed in Court today are taken on record.

The writ petition stands disposed of.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties upon compliance of all legal formalities.

(AMRITA SINHA, J.)