

OD(SL)-1

WP/1199/2023

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
ORIGINAL SIDE

ANISH GHOSH
-VERSUS-
STATE OF WEST BENGAL & ORS.

BEFORE

The Hon'ble Justice AMRITA SINHA

Date: 18th May, 2023

APPEARANCE

*Mr. Somnath Gangopadhyay, Adv.
...for the petitioner.*

*Mr. Alak Kumar Ghosh, Adv.
Mr. Gopal Chandra Das, Adv.
...for the KMC.*

The court: Affidavit of service filed in Court is taken on record.

The matter relates to the construction made at B/3/H/9, Raja Sir Radha Kanta Deb, 4th Lane, Ward No.8, Borough-I under the jurisdiction of the Kolkata Municipal Corporation.

The petitioner claims that he is the successor-in-interest of the deceased thika tenant. The land in question is a thika property and the construction standing thereon became so dilapidated that the petitioner was compelled to demolish the same and raise new construction thereon.

Learned Advocate representing the petitioner admits that there is no plan sanctioned by the Kolkata Municipal Corporation for raising such construction.

The Kolkata Municipal Corporation, on 2nd February, 2023 issued a stop work notice under Section 401 of the Kolkata Municipal Corporation Act, 1980 directing

the petitioner to immediately stop all construction work including addition, alteration at the subject premises as the same is being carried on without any sanction. The construction in question is presently a G+3 storied building (four floors).

The petitioner contends that an application has been made for regularisation of the subject structure on 10th May, 2023. The same has not been considered.

The Kolkata Municipal Corporation has purportedly invoked the provision of Section 400(8) of the KMC Act, 1980 and the men and agents of the Kolkata Municipal Corporation have arrived at the spot for execution of the order of demolition today i.e., 18th May, 2023.

It has been submitted that no notice or prior opportunity was given to the petitioner to defend the construction. Reliance has been placed on the Office Circular No.8 of 2021 dated 19th January, 2021 issued by the Director-General (Building), Kolkata Municipal Corporation with regard to determination of fees for retention of unauthorised structure and change of use which are allowed by the Special Officer (Building) and the Municipal Authority.

It has been submitted that the Kolkata Municipal Corporation is obliged to take into consideration the prayer of the petitioner for regularisation of the subject structure prior to effecting the demolition work.

It is the further submission of the petitioner that the Kolkata Municipal Corporation is not accepting any plan proposal for sanction of building plan in respect of thika properties and, accordingly, the petitioner was left with no other alternative but to demolish the old construction and raise new construction thereon.

Prayer has been made for restraining the Corporation from proceeding with the work of demolition and directing the Corporation to consider the prayer for regularisation of the construction made.

Learned counsel representing the Kolkata Municipal Corporation opposes the submissions and prayer of the petitioner. It has been submitted that the petitioner ought to have obtained necessary sanction prior to raising construction. The petitioner has himself admitted that the construction has been made without obtaining any sanction. The construction in question has been raised upto the 4th floor level. The construction work of the petitioner continued despite the stop work notice issued to the petitioner. The Circular relied upon by the petitioner will not be applicable in the facts and circumstances of the case. Prayer has been made for dismissal of the writ petition.

I have heard and considered the submissions made on behalf of both the parties.

The sheet anchor of the petitioner's submission is the above Circular No.8 of 2021 dated 19th January, 2021. The said Circular relates to determination of fees for retention of unauthorised structure and change of use which are allowed by the Special Officer (Building) and the Municipal Authority.

In the present case proceeding has not been initiated either before the Special Officer (Building) or the Municipal Authority. It is only after permission is granted by the Special Officer (Building) or the Municipal Authority for retention of the unauthorised construction that the said office circular comes into play. Prior to the same, the petitioner cannot claim benefit of the said circular.

In the instant case, there is no document in support of the submission of the petitioner that a plan proposal was submitted before the Kolkata Municipal

Corporation seeking sanction for raising construction. The petitioner has simply demolished the existing structure and raised new construction without any sanction at all. The said action of the petitioner is absolutely impermissible in view of the provisions laid down in the Kolkata Municipal Corporation Act, 1980.

The petitioner has not been able to show any bona fide with regard to raising the construction at the very first place. If the contention of the petitioner that the construction can be raised first and thereafter the construction will be regularised by the Corporation is to be accepted, then the requirement of obtaining sanction prior to raising construction becomes nugatory.

Such a stand will lead to a dangerous precedent and, henceforth, the builders will hardly approach the authority for sanction of building plan prior to raising construction. The trend will be to raise construction and thereafter apply before the Corporation for regularisation. Such proposition ought not to be supported by the Court.

In view of the above, the prayer of the petitioner for consideration of his application for regularisation cannot be considered. The prayer sought for restraining the Corporation from proceeding with the work of demolition also cannot be accepted.

WPO/1199/2023 fails and is hereby dismissed.

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

(AMRITA SINHA, J.)