

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Original Side

Present :- Hon'ble Justice Amrita Sinha

WPO 1385 2023

SOURASIS NAG
VS
THE KOLKATA MUNICIPAL CORPORATION & ORS.

For the writ petitioner	:-	Mr. Nirmalya Dasgupta, Adv. Mr. Chanchal Kumar Dutta, Adv. Ms. K. Mullick, Adv.
For the KMC	:-	Mr. Debjit Mukherjee, Adv. Ms. Susmita Chatterjee, Adv.
For respondent no. 6	:-	Mr. Raghunath Chakraborty, Adv. Mr. M. Ahmed, Adv.
Heard on	:-	19.07.2023
Judgment on	:-	19.07.2023

Amrita Sinha, J.:-

The petitioner is aggrieved by the order passed by the Municipal Building Tribunal, Kolkata Municipal Corporation on 06.06.2023 in BT Appeal No.50 of 2022.

The matter relates to premises no.19, Fakir Chand Mitter Street, Ward 38, Borough-IV under jurisdiction of the Kolkata Municipal Corporation.

The structure constructed at the aforesaid premises is suffering an order of demolition passed by the Special Officer [Building] under Section 400[1] of the Kolkata Municipal Corporation Act, 1980.

The person responsible obtained sanction for construction of building of G+4 height in the year 2019. Two additional floors were constructed and the mandatory side open spaces were encroached. Construction was made in deviation of the plan sanctioned.

A complaint was lodged by the adjoining owner alleging that the construction made by the petitioner was damaging the complainant's house. An inspection was conducted and it was found that there are several infringements which are as follows:

Rule	Required/sanction	Provided	Remarks
Front open space[R-62]	5.00 M	0.50 M	Infringed
Side open space-I[R-62]	5.00 M	0.45 M	Infringed
Side open space –II[R-62]	5.00 M	0.60 M	Infringed
Rear open space [R-62]	6.50 M	1.20 M	Infringed
FAR [R-69]	2.278	4.73	Infringed
Ground coverage [R-70]q	57.36%[122.37 sq.m]	81.99%[174.33 sq.m]	Infringed
Height [R-74]	15.50 M	21.55 M	Infringed
Car parking [R-78]	87.46 sq.m.	57.62 sq.m	Infringed
Fire fighting [R-122]	Unknown		
Structural stability [R-133]	Unknown		
Quality of materials used & workmanship [R-134]	Unknown		

The total area of unauthorised construction is 522.49 sq.m. A demolition sketch and infringement statement was prepared. Hearing was conducted and after hearing of the parties the Special Officer [Building] directed all unauthorised constructions including two additional floors to be demolished and the demolition to be carried out under the supervision of the Licenced Building Surveyor/Empanelled Structural Engineer in order to protect the neighbouring buildings from getting damaged.

Challenging the order passed by the Special Officer, the person responsible filed appeal before the Municipal Building Tribunal. The learned Tribunal after hearing the parties and relying on the opinion of the learned technical member of the Bench was pleased to dismiss the said appeal.

The petitioner is aggrieved by the same. Submission is that no opportunity was given to the petitioner to peruse the report of the technical member. The petitioner was not aware of the opinion given by the technical member relying on which the appeal stood dismissed.

The petitioner relies upon the Office Circular no.2/15-16 dated 11.07.2015 issued by the Director General [Building] with regard to approval of additional floor area ratio and height for partial extension over already sanctioned building under the prevailing Building Rules, 2009. Reliance has

also been placed on the agenda of the Mayor in Council meeting dated 30.06.2015 wherein specific instruction for regularisation has been sought for.

According to the petitioner, one opportunity ought to have been given to the petitioner to file an exception to the opinion of the technical member to defend his case.

Prayer has been made to set aside the impugned order and remand the matter to the appellate forum after giving an opportunity to the petitioner to deal with the opinion of the technical member.

I have heard the submission made on behalf of the petitioner and have perused the order passed by the Special Officer [Building] and the Municipal Building Tribunal.

It appears that sanction was obtained for construction of G+4 storied structure. The petitioner constructed the 5th and partly 6th floor without any sanction. The minimum side open spaces in front and rear have also been infringed. The Building Tribunal was of the opinion that the structure is dangerous and the person responsible violated all the engineering norms for construction.

The Tribunal was of the opinion that the question of regularisation of the additional floors does not arise at all as there is nothing on record to suggest that the building has been constructed after maintaining and observing all the engineering phenomenon.

The Court is not inclined to accept the submission of the petitioner that the opinion of the learned technical member ought to have been given in advance to the appellant to file exception to the same. The Tribunal after hearing the parties and upon perusal of the documents dismissed the appeal. The opinion of the technical member is recorded in the order and the same forms part of the order. It could not have been provided in advance to the parties.

There is hardly any scope for a litigant to file an exception to the opinion of the member of the Tribunal. The technical member of the Tribunal is not the

adversary of the petitioner. The said member is a part of the statutory adjudicatory authority.

It appears that sanction was obtained for construction of G+4 storied structure and admittedly two additional floors were constructed without obtaining any sanction at all.

According to the provisions of the Act, construction can be made only after obtaining sanction and not prior thereto. The Office Circular relied upon by the petitioner is of the year 2015. The petitioner obtained sanction for raising construction in the year 2019. Had the petitioner intended to construct a G+6 storied building, the petitioner ought to have applied for obtaining sanction for G+6 storied building and ought not to have obtained sanction for G+4 storied building and thereafter construct two additional floors without any sanction, that too, relying upon an ante dated Office Circular of the Corporation.

The act of the petitioner in raising two additional floors and encroaching the mandatory side open spaces with the intention to get the same regularised in future relying upon an Office Circular is an absolute mala fide attempt on the part of the petitioner to get an illegal construction regularised.

The Kolkata Municipal Corporation Act does not permit regularisation of two additional floors constructed beyond the sanction plan without maintaining the engineering norms. There is no provision in the Act to regularize such illegal construction.

If such attempt of the builders is accepted, then the general trend will be to raise construction without obtaining sanction and thereafter approach the Corporation for regularisation. The same cannot be permitted by the Court. An errant builder cannot expect leniency from the Court and seek regularization of any construction made illegally. Showing misplaced sympathy to builders who dare to raise construction without sanction will weaken the morale of the honest ones who care to obtain sanction prior to making construction and those who raise construction in accordance with the plan sanctioned.

The Court is convinced that the impugned order of the Tribunal is a justified one and does not call for any interference.

In view of the above, no relief can be granted to the petitioner in the instant writ petition. The writ petition fails and is hereby dismissed.

Instruction filed by the engineers of the Corporation in Court today be retained with the records.

Affidavit of service filed in Court today be taken on record.

Urgent certified photocopy of this judgment, if applied for, be supplied to the parties or their advocates on record expeditiously on compliance of usual legal formalities.

(Amrita Sinha, J.)