

WPO/1426/2023

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
ORIGINAL SIDE

M/S. KZAR PROPERTIES PVT. LTD. &
ANR.

-Versus-

THE KOLKATA MUNICIPAL CORPORATION
AND ORS.

BEFORE

The Hon'ble Justice AMRITA SINHA

Date: 25th July, 2023

APPEARANCE:

Mr. Raghunath Chakraborty, Adv.

Ms. Amrita De, Adv.

...for the petitioner.

Mr. Gopal Chandra Das, Adv.

Mr. Dwijadas Chakraborty, Adv.

...for the KMC.

Mr. Arindam Mondal, Adv.

...for the State.

The Court: Affidavit of service filed in Court today, be retained with the records.

Heard submissions made on behalf of both the parties.

Reference has been made to an order passed by the Special Officer (Building), Kolkata Municipal Corporation on 28th December, 2022 in connection with a demolition proceeding under Sections 400/400(1) and 416 of the KMC Act, 1980 in respect of premises no.85/2A, Muzaffar Ahmed Street, Ward No.62, Borough-VI.

The Special Officer passed an interim order in the matter directing the person responsible to demolish the construction on portion of the open space marked in the demolition sketch within 30 days from the date of communication of the order.

The petitioner submits that the demolition of the portions mentioned in the demolition sketch has been conducted and the Corporation has been intimated about the same.

The Special Officer directed that after the demolition work is done, a fresh infringement statement is to be produced. The person responsible has to procure fresh observation from the West Bengal Fire & Emergency Services. The date of final hearing will be communicated after compliance of the above.

The petitioner has averred in the writ petition that application was made before the West Bengal Fire & Emergency Services for issuance of revised fire safety recommendation on 10th May, 2023 but the same is yet to be issued.

The petitioner contends that for want of the fire safety recommendation, the demolition proceedings cannot be concluded.

Learned advocate representing the Corporation submits, upon instruction, that the portions mentioned in the demolition sketch have been more or less demolished.

Learned advocate representing the petitioner raises an issue with regard to the manner in which the interim order was passed by the

Special Officer (Building). It has been submitted that the Special Officer (Building) does not have any authority to pass interim order in the matter. The Special Officer ought to have decided the issue conclusively.

The aforesaid contention of the petitioner is strictly opposed by the learned advocate representing the Corporation. It has been submitted that the petitioner cannot approbate and reprobate at the same time. The petitioner has acted in terms of the direction passed by the Special Officer (Building) and now, at this stage, cannot turn around and challenge the same.

The contention of the petitioner that the Special Officer cannot pass interim order cannot be accepted by the Court. It appears that the interim order was passed in aid of passing the final order. The Special Officer came to a conclusive finding that total area of unauthorised construction is 636.995 sq.mts. and the same are required to be demolished and passed necessary direction. The petitioner accepted the direction passed by the Special Officer and demolished the portions which were held to be unauthorised. At this stage a fresh recommendation from the Fire & Emergency Services is required to be produced for processing the matter further.

The petitioners accepted the order of the Special Officer and have applied before the Fire & Emergency Services. It will be open for the petitioner to pursue the matter with the Fire & Emergency Services for obtaining the revised recommendation and place the same before the

Special Officer (Building) for passing a final order in the matter. As regards the infringement statement, as required to be produced, the same shall be supplied by the Kolkata Municipal Corporation after spot inspection of the property to ascertain as to whether the demolition, as conducted by the petitioner, was in accordance with the demolition sketch.

On receipt of the revised recommendation, the Special Officer (Building) shall proceed to dispose of the demolition proceeding in accordance with law, at the earliest.

The writ petition (WPO/1426/2023) stands disposed of.

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

(AMRITA SINHA, J.)