

OD-3

WPO/1756/2023
IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
ORIGINAL SIDE

SMT. MITA MENON AND ORS.
VERSUS
THE KOLKATA MUNICIPAL CORPORATION AND ORS.

BEFORE:
The Hon'ble JUSTICE AMRITA SINHA
Date: 23rd November, 2023.

Appearance:
Mr. Dyutiman Banerjee, Adv.
Mr. Amartya Basu, Adv.
Mr. Vishal Mallik, Adv.
. . .for the petitioners.

Mr. Debashis Banerjee, Adv.
Mr. Supreem Naskar, Adv.
. . .for the respondents.

Ms. Piyali Sengupta, Adv.
. . .for the KMC.

The Court: The petitioners are aggrieved by the inaction on the part of the Hearing Officer in not communicating the final order of the hearing conducted on 18th April, 2022.

In response to an application filed by the petitioners under the Right to Information Act, 2005 the petitioners were communicated that the Special Officer (Building) passed order on 30th of May, 2022. The said order was placed before the Mayor in Council for final outcome.

The petitioners were never intimated the final outcome of the decision of the Mayor in Council. Prayer has been made by the petitioners to intimate them the fate of the hearing.

Learned advocate representing the private respondents submits, upon instruction that, his clients have also not been intimated the fate of the hearing. The private respondents have, however, been directed to deposit retention charges for regularizing the alleged unauthorized construction which the private respondents have duly deposited.

Learned advocate representing the Kolkata Municipal Corporation has received instruction from the Assistant Engineer (Civil)/Building and Executive Engineer (Civil)/Building/Br.-X signed on 18th November, 2023 wherein it has been mentioned that on receipt of a complaint regarding illegal raising of ground level in the garage at premises no. P-41, Gariahat Road (South), ward no.92, the department inspected the site and found that portion of the car parking at the ground floor of G+IV storied building has been raised by 300 mm causing infringement of the clear height of the head room.

Demolition proceeding under Section 400 of the KMC Act was initiated and the Special Officer (Building) heard the matter and passed reasoned order on 30th May, 2023. The order has been placed in the MMIC meeting for final approval as per the prevalent procedure towards compliance of the order of the Special Officer (Building).

From the submission made on behalf of the parties and upon perusal of the materials before this Court it appears that the information under the Right to

Information Act mentions the date of the order passed by the Special Officer (Building) as 30th May, 2022. The instruction forwarded by the engineers in Court today mentions that reasoned order was passed by the Special Officer (Building) on 30th May, 2023. There is confusion with regard to the date of the order passed by the Special Officer (Building), whether it is in the year 2022 or 2023.

There is, however, no dispute to the fact that the order of the Special Officer (Building) has been placed before the Mayor in Council and the order passed by the Special Officer is yet to be approved by the Mayor in Council.

Possibly that may be one of the reasons as to why the order passed by the Special Officer (Building) has not been communicated to either of the parties till date.

As it appears that the order has finally been passed by the Special Officer (Building) accordingly, the Corporation is directed to take steps for obtaining approval of the said order from the competent authority, if required in law, and thereafter communicate the same to the parties.

The Corporation shall take steps in the matter at the earliest but positively within a period of eight weeks from the date of communication of this order.

WPO No. 1756 of 2023 is disposed of.

Instruction forwarded by the Corporation be retained with the records.

Learned advocate representing the private respondents undertakes to file vakalatnama in the department in course of the day.

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

(AMRITA SINHA, J.)

sp/