

15-04-2024
Item No.4
Subrata
Bhattacharyya
AR(C)

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

WPA No.1699 of 2024
Ramjee Lal Agarwal

-vs-

The State of West Bengal & Ors.

Mr. Saktinath Mukherjee, sr. adv. (through VC)
Mr. Sounak Bhattacharya
Mr. Sounak Mondal
Mr. Chandra Nath Sarkar ...for the petitioner

Mr. Indranil Roy
Mr. Tapas Kumar Mondal ...for the State

Mr. Subhrangsu Panda
Ms. Ina Bhattacharyya ...for the Corporation

The writ petition pertains to a wooden mezzanine floor within the ground floor of premises no. 4, Synagogue Street, Kolkata-1, Ward No.45, Borough-V of the Kolkata Municipal Corporation. A complaint was lodged in the year 2019 against the said wooden mezzanine floor alleging unauthorised construction. Presently, the petitioner apprehends that demolition of the said mezzanine floor may be carried out very soon.

It is submitted that no notice of the proceeding dealing with the unauthorised construction has been served upon the petitioner. According to the petitioner, the construction in question is in existence prior to the year 1985 which would appear from a communication dated November 15, 1985 written by the Senior Manager of the Central Bank of India to the landlord of the subject premises.

It is also submitted that the petitioner entered into a tenancy in respect of the aforesaid wooden mezzanine floor structure in the year 2018 and is paying rent regularly to the landlord.

Learned advocate representing the Corporation relies upon the instructions forwarded by the concerned engineers of the Corporation signed on April 5, 2024 mentioning that action under section 400(8) of the Kolkata Municipal Corporation Act, 1980 had been invoked and the demolition date was fixed on December 21, 2023. The demolition programme could not be implemented on the said date, in view of an interim order passed by this court in CRR No.981 of 2022 with CRAN No.6 of 2023 filed by the petitioner. Further date of demolition is scheduled on April 16, 2024.

The instruction of the Corporation mentions that the construction in question is of wooden/plywood with iron frame structures in the mezzanine floor along with staircase made of wooden/plywood with iron frame structures leading from ground level to the mezzanine floor.

The conduct of the Corporation in invoking section 400(8) of the 1980 Act, in my view, does not appear to be proper. The construction in question was detected sometime in 2019. The Corporation waited for four years for invoking emergency provision. The petitioner has annexed documents to show that the construction has been in existence prior to 1985.

Whether the wooden mezzanine floor constructed nearly forth years back could be treated as an unauthorised one is required to be decided upon giving an opportunity of hearing to the petitioner.

In view of the above, action taken under section 400(8) of the 1980 Act dated July 3, 2020 (Annexure P9, p.38) issued by the fourth respondent is hereby set aside.

The Executive Engineer of the concerned Borough is directed to grant an opportunity of hearing to the petitioner and all other necessary parties to decide as to whether the construction in question can be treated as an unauthorised construction or not. Whether any sanction was required to be obtained prior to making the wooden construction shall be decided.

The Corporation shall decide the issue at the earliest, but positively within twelve weeks from the date of communication of this order.

This instant order is passed without prejudice to the rights of the parties in the criminal proceedings pending before this court.

The written instructions filed on behalf of the Corporation signed on April 5, 2024 is taken on record.

WPA No.1699 of 2024 is thus disposed of.

Certified copy of this order, if applied for, shall be made available to the parties.

[Amrita Sinha, J]

