

23.02.2024
Court No.13
Item No.4
AP

WPA 4121 of 2024

**Sri Kalyan Dutta
Vs.
The Kolkata Municipal Corporation and Ors.**

Mr. Debjit Mukherjee
Mr. Gopal Chandra Das
Ms. Ananya Das

... For the Petitioner.

Mr. Fazlul Haque
Ms. Debangana Dey Nayak

... For the KMC.

1. The writ petitioner complains that the Kolkata Municipal Corporation (KMC) has initiated the proceedings against the demolition of an unauthorized construction without any notice of stop work or self-demolition.

2. It is further orally submitted by Ld. Counsel for the writ petitioner at the time of mentioning yesterday and in course of oral argument today that no hearing was given to the writ petitioner before demolition orders of the unauthorized construction made by him.

3. The writ petitioner, therefore, submits that he did not get an opportunity to either prefer an appeal or seek remedies against the allegation of unauthorized construction on the demolition.

4. Counsel for the KMC, Mr. Fazlul Haque, submits that the writ petitioner is trying to mislead the Court. It is submitted that an application was duly sanctioned by

KMC on 23rd November 2022, to effect addition and alterations in an existing old two-storied building of the petitioner.

5. On a complaint of unauthorized construction, an inspection was conducted by the KMC sometime in the year 2023. A stop work notice was also issued to the writ petitioner thereafter.

6. The inspection of the KMC revealed that the writ petitioner had covered a mandatory open space on the existing second floor and had unauthorizedly constructed a third floor.

7. After the submissions of learned counsel for the KMC, the writ petitioner refers to paragraphs 5 and 6 of the writ petition, where it is indicated that hearing was granted to the writ petitioner in respect of the unauthorized construction on 13th January, 2024.

8. The writ petitioner seeks an opportunity of hearing before demolition of the unauthorized construction.

9. In the backdrop of the above and given the approbation, reprobation and suppression of certain material facts at the time of mentioning and in course of oral arguments, this Court is of the view that the writ petitioner is not entitled to any equitable relief under Article 226 of the Constitution of India.

10. Since the writ petitioner has remedy of appeal before the authorities, he may prefer an appeal for whatever it is worth, subject to limitation against the order of demolition dated 16th January, 2024. A certified copy of the aforesaid order shall be made available to the writ petitioner within 48 hours.

11. Admittedly, the writ petitioner has effected unauthorized construction of the entire third floor.

12. This Court is not inclined to grant any relief to the writ petitioner in respect of the demolition, for suppression of material facts and misleading the court into taking up the matter on the basis of urgency.

13. Hence, the writ petition is dismissed with cost assessed at Rs.7,500/- payable by the writ petitioner to the KMC.

14. Written instructions of the KMC dated 22nd February, 2024 is kept with the record.

15. All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

(Rajasekhar Mantha, J.)