

09.07.2024
Sl.03.
Suman
Ct.No.15

WPA 8225 of 2024

Somnath Mukherjee
Vs.
The Kolkata Municipal Corporation and Ors.

Ms. Soma Kar Ghosh
Mr. Sanjoy Kumar Ghosh
..for the petitioner

Mr. Atis Kumar Biswas
Ms. Susmita Chatterjee
..for KMC

Mr. Supratik Shyamal
Ms. S. Chatterjee
..for respondent no.6

The petitioner seeks to implement an order dated June 27, 2023, passed by the Building Tribunal, Kolkata Municipal Corporation in B.T. Appeal No.193 of 2022.

It has been submitted by the learned advocate appearing for the petitioner that respondent no.6 has unauthorisedly constructed two rooms, one kitchen and one wash room measuring about 416 sq. ft. at the relevant premises. Therefore, a direction should be given upon the Corporation for demolition of the entire unauthorised construction as found by the Tribunal.

Conversely, respondent no.6 submits that a revisional application has been preferred before this

Court against the order of the Building Tribunal. Therefore, the order of the Building Tribunal should not be given effect to.

The Special Officer (Building) by an order dated January 3, 2022, directed that a kitchen allegedly constructed by respondent no.6 measuring about 80 sq. ft. should be demolished. The said order was carried in appeal by respondent no.6. The Building Tribunal, however, observed that the nature and extent of the unauthorised construction is much wider and remanded the matter back to the learned Special Officer (Building) with the following order.

“That the B.T. Appeal No.193 of 2022 be and the same is allowed on contest in the following form.

That the impugned order dated 03.01.2022 passed by the Ld. Special Officer (Building) in Demolition Case No.12-D/IX/20-21 in respect of the Premises No.10/A, Rup Chand Mukherjee Road, Ward No.73, Borough-IX is hereby set aside.

That the Ld. Special Officer (Building) is directed to dispose of this proceeding as per the direction given by this Tribunal to him in the body of this judgement complying of the directions given hereinabove to pass necessary order in respect of illegal constructions.

That the stay petition stands disposed of accordingly.

That the matter shall be placed before the Municipal Commissioner, Kolkata Municipal Corporation and Municipal Commissioner, Kolkata Municipal Corporation shall place this dispute before another Officer deputed by him to act as Ld. Special Officer (Building) instead of Ld. Special Officer (Building) who has disposed of this proceeding at present.”

I am of the view that there is no scope to pass a direction upon the Corporation to demolish the unauthorised construction at this stage.

The extent of unauthorised construction to be demolished should be decided by the Special Officer (Building) afresh in terms of the order of remand of the Tribunal.

There is no doubt that the Special Officer (Building) and the Corporation ought to have acted in terms of the order of the Building Tribunal dated June 27, 2023.

In that view of the matter, the writ petition is disposed of with a direction upon the Corporation to comply with the order of the Appellate Tribunal within a period of three months from the date of communication of this order.

Accordingly, **WPA 8225 of 2024** is disposed of.

Urgent photostat certified copy of this order, if applied for, be supplied to the learned advocates for the parties on usual undertakings.

(Kausik Chanda, J.)