

Item No. 07

28.03.2024
Ct-24
AGM

In the High Court At Calcutta
Constitutional Writ Jurisdiction
Appellate Side

WPA 9021 of 2024

Raj Kumar Singh & Anr.
v.
State of West Bengal & Ors.

Mr. K. M. Hossain.
Mrs. Paramita Pal.
Mr. Soumojit Sen.
... for the petitioners.

Mr. S. Panda.
Ms. Ina Bhattacharya.
... for the K.M.C.

Mr. Anand Farmania.
Mrs. Indumouli Banerjee.
... for the State.

The petitioner is aggrieved by the notice dated 14th March, 2024 under Sections 544 and 546 of the KMC Act, 1980 issued by the Assistant Engineer (Civil), Building Department, Borough-XV under the jurisdiction of the KMC intimating the petitioners that the men and agents of the Corporation will enter into the premises no. J-474/C/1, Paharpur Road, Ward No. 134, Borough-XV with necessary assistants and workmen on 28.03.2024 for the purpose of demolition of the unauthorised structure as directed to be demolished by

the Special Officer (Building) vide order dated 7th July, 2023 under Section 400(1) of the KMC Act, 1980.

The petitioners submit that challenging the order passed by the Special Officer (Building), an appeal has been preferred before the statutory appellate forum being B.T. Appeal No. 212 of 2023 which is pending consideration till date and the next date of hearing has been fixed in the month of April, 2024.

Prayer has been made to defer the demolition proceeding till the appeal is decided by the appellate forum.

I have perused the order of demolition passed by the Special Officer (Building) on 7th July, 2023.

The order records that the total area of unauthorised construction is 1141.867 sq. meters. There is a plan sanctioned for erection of G+4 storied building but the building has been constructed with massive violation of the sanctioned plan.

The mandatory side open spaces on all four sides have been infringed. The floor area ratio has been massively increased by erection of RCC columns in the open spaces. Unauthorised construction has been made in all the floors.

The Special Officer directed demolition of the portion marked in the demolition sketch within 45 days from the date of communication of the order, failing

which action would be taken by the department for demolition of the unauthorised construction and the cost to be recovered from the persons responsible.

The Special Officer further records that after demolition of the unauthorised construction a further hearing will be conducted on submission of fresh demolition sketch and structural stability certificate from the empanelled structural engineer for the remaining portion. In case structural disorder is detected, the entire structure may be demolished. The demolition sketch was made a part and parcel of the order.

The time to execute the order of demolition expired long back. The petitioners submit that an appeal has been preferred before the appellate forum. It is settled law that mere filing an appeal does not act as stay of the order appealed against.

In the present case, it appears that massive unauthorised construction has been made which has been directed to be demolished. The person responsible for making construction ought to have been obtained an order of stay within the time limit as mentioned in the order of demolition. As on date, there is no order staying operation of the order of demolition.

The Court does not find any error on the part of the Corporation in taking steps to implement the order

of demolition. There is hardly any scope on the part of the plan sanctioning authority to regularize the massive unauthorised construction to the extent of 1141.867 sq. meters by infringing upon all the mandatory side open spaces.

No amount of leniency or mercy ought to be shown to such unscrupulous and dishonest builders who raise constructions in deviation of the plan sanctioned.

The Court is not inclined to exercise jurisdiction in the matter. The men and agents of the KMC are directed to proceed with the demolition work and continue the same on day to day basis till the entire construction is brought down.

The writ petition fails and is hereby dismissed.

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

(Amrita Sinha, J.)