

07 30.4.2024
Sc Ct. no.22

(A s s i g n e d)

WPA 8976 OF 2023

Subhasis Bera

Vs.

The Kolkata Municipal Corporation & Ors.

Mr. Uday Sankar Bhattacharya
Ms. Sudeshna Basu Thakur
Mr. Banani Bhattacharya.

.... For the Petitioner

Mr. Barin Banerjee
Mr. Gurudas Mitra
Ms. Manisha Nath.

.... For the Respondents
KMC

Mr. Mainak Ganguly
Mr. Siddharth Shroff.

.... For the Respondent
Nos. 6 to 8

This is an assigned writ petition.

On the prayer of Mr. Gurudas Mitra, learned counsel appears for the respondent nos. 1 to 3, time to file report in the form of affidavit stands extended till today. The affidavit-report affirmed on February 20, 2024 filed in Court today, is taken on record. A copy of such report shall be furnished to Ms. Sudeshna Basu Thakur, learned advocate-on-record for the petitioner in course of the day positively.

The reliefs claimed in the writ petition are quoted below :

“a) *A Writ in the nature of Mandamus do issue commanding the Respondent Authorities and each of their men, agent*

and associates to act in accordance with law.

- b) A Writ in the nature of Mandamus, do issue commanding the Respondent Authorities and each of their men, agents and associates to take steps to stop the illegal and unauthorized construction made by the Respondent no.6,7 and 8 at Premises and/or Holding No.44/1, Siddhinath Chatterjee Road, Police Station - Parnashree, Kolkata – 700034 with immediate effect.
- c) A Writ in the nature of Mandamus, do issue commanding the Respondent authorities and each of their men, agents and associates to demolish the illegal and unauthorized construction, if any made by the Respondent No.6, 7 and 8 in respect of the premises and/or holding no.44/1 Siddhinath Chatterjee Road. Police Station – Parnashree, Kolkata – 700034, with immediate effect.
- d) A Writ in the nature of Certiorari do issue commanding the Respondent Authorities and each of their men, agents and associates to certify and transmit the case record before this Hon’ble Court so that conscionable justice may be done upon perusal thereof.
- e) Rule NISI in terms of prayer a, b, c and d above.
- f) Interim order directing the Respondent authorities and each of their men, agents and associates to take steps to stop the illegal and unauthorized construction made by the Respondent no.6, 7 and 8 in respect of the premises and/or holding no.44/1 Siddhinath Chatterjee Road, Police Station – Parnashree, Kolkata – 700034 with immediate effect.
- g) Ad interim order in terms of prayer (f) above.
- h) And/or to pass such other or further order/orders as Your Lordship may deem fit and proper.”

On January 17, 2024 a coordinate Bench directed the **Director General (Building), KMC** to hold a meeting between the petitioners and the respondent nos. 6 to 8

within the time stipulated therein when the Executive **Engineer (Building), Borough XIII and XIV, KMC** shall remain present. Minutes of the meeting was directed to be recorded properly and was directed to be filed before this Court in the form of an affidavit. The **Director General (Building), KMC** was granted liberty to visit the subject premises if necessary.

Being aggrieved by the above direction of the coordinate Bench the private respondents being the respondent nos. 6 to 8 herein preferred an appeal being **MAT 237 of 2024**.

The Hon'ble Division Bench by its order dated **March 4, 2024** after considering the issue involved in the writ petition disposed of the appeal with the following observation :

“ In view of the aforesaid, it appears that the entire unauthorized construction has been demolished by the appellants. The appellants further say that the direction for shifting of the electric meter issued by the Director General by the aforesaid order dated February 19, 2024, is in the process of being carried out. If the meter room is an unauthorized structure, the same shall also be demolished by the appellants. We are told that it will take about a fortnight to complete that process. We grant three weeks' time to the appellants to complete the process. The appellants shall in writing intimate to the respondent/writ petitioner as also the appropriate officer in Kolkata Municipal Corporation once that process is completed. The Kolkata Municipal Corporation authorities shall hold a further inspection to ensure that the direction has been carried out.

In light of the above, we see no reason to keep the appeal pending. Learned advocate for the respondent/writ petitioner says that there are issues regarding change of user of the

premises in question by the appellants. He says that the appellants have converted the premises into commercial premises when the premises are residential in nature, without obtaining requisite permission from the Corporation. Such issue is beyond the scope of this appeal. The respondent/writ petitioner shall be at liberty to agitate such issue in accordance with law before the appropriate forum.

The appeal and the connected application stand disposed of accordingly.”

When the writ petition has been taken up for final consideration today, Mr. Gurudas Mitra, learned counsel appearing for the respondent nos. 1 to 3 has made over the following documents to the Court :

- i) A site inspection report dated **April 29, 2024** signed by the **Sub Assistant Engineer (C), (Building)** showing upon inspection of the site it was found that, the private respondents had shifted the electric meter within the sanctioned space;
- ii) A communication dated **March 14, 2024** written by the respondent no.6 to the corporation authority informing that, in compliance of the order dated **March 4, 2024** passed by the Hon'ble Division Bench the electricity meter has been shifted and the enclosure housing such meter has been demolished. Photographs were also appended thereto and

- iii) A report of the corporation signed by the **Assistant Engineer (Civil)** and the **Executive Engineer (C)/B, Borough XIII and XIV** confirming that, after inspection of the said premises by the KMC authority it was found that, the electric meter has been shifted from the mandatory open space to a position within the sanctioned space.

All the aforesaid documents are taken on record.

Both the learned counsel appearing for the KMC authority and the private respondents have submitted that, nothing further survives in this writ petition considering the reliefs claimed therein and after compliance of the direction of the Hon'ble Division Bench.

Mr. Uday Sankar Bhattacharya, learned counsel appearing for the petitioner referring to an exception filed by the petitioner in the form of an affidavit affirmed on January 5, 2024 submits that, the Assistant Engineer (C)/B and the Executive Engineer (C)/B have filed a report wherefrom it appears that there is a serious change of user of the subject premises from residential to commercial, which is not permissible in law. He further submits that, the said report of the corporation authority itself shows there are illegal user of the premises beyond the permitted limit. The petitioner, therefore, claims appropriate direction to negate such change of user.

Per contra, Mr. Gurudas Mitra, learned counsel for the KMC authority referring to the said document being **Annexure-A at page 7** to the said exception, filed by the petitioner, submits that, this was not a report filed by the corporation authority but an order of the Special Officer (Building) and ultimately all the illegalities were cured in terms of the direction of the Hon'ble Division Bench.

After considering the rival contentions of the parties and upon considering the materials on record, at the outset, this Court is of the view that, the observation of the Hon'ble Division Bench while disposing of the appeal made it clear that, the **entire unauthorised construction** has been demolished by the private respondents being the appellants therein. The documents placed before this Court by the corporation today, which are referred to above and taken on record, clearly show that, the direction of the Hon'ble Division Bench stands totally complied with.

Insofar as the allegation of change of user made by the petitioner, as recorded above, such case is not at all pleaded in the writ petition neither the reliefs claimed in the writ petition would support such claim of the petitioner. The reliefs from the writ petition are already quoted above.

It is settled law that, the court cannot make out a third case which is neither pleaded by the petitioner nor made out by the respondents. Thus, by way of filing an

exception the petitioner cannot build up a third case which is not in the writ petition.

In view of the foregoing reasons and discussions and in view of the observation of the Hon'ble Division Bench and more so that, the directions of the Hon'ble Division Bench having been totally complied with, this Court is of the firm view that, nothing further survives in this writ petition.

Accordingly, with the above observations this writ petition, **WPA 8976 of 2023** stands ***disposed of***, without any order as to costs.

Photostat certified copy of this order, if applied for, be furnished expeditiously.

(Aniruddha Roy, J.)