

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

W.P.A. 11960 of 2023

(Assigned)

Sri Partha Pratim Karan

Vs.

The State of West Bengal & Ors.

For the petitioner	:Mr. Ajit Kumar Chaubey, Adv. Mr. Kushal Chatterjee, Adv. Mr. Shashwat Nayak, Adv. Mr. Noorul Islam, Adv. Mr. Rahul Kinkar Pandey, Adv. Mr. Vinayak Chaubey, Adv.
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For the K.M.C.	:Mr. Gopal Chandra Das, Adv. Mr. Subrata Sikdar, Adv.
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For the Respondent No. 5	:Mr. Sabyaschi Bhattacharya, Adv. Mr. Z. Ahmed, Adv.
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Heard On :	:01.05.2024, 13.06.2024, 25.06.2024
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Judgment On :	: 12.08.2024
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Bibhas Ranjan De, J. :

1. The instant writ petition has been filed with the following substantive prayers:-

a. A writ in the by mandamus be issued directing the respondent municipal authorities to implement its own order dated 15.12.2003 passed in demolition case no. D/ Case No. 38-D/2003-04, passed by the Mr. N. K. Chakraborty, Special Officer (Building), Kolkata Municipal Corporation so that considerable justice may be done.

b. A writ in the nature of mandamus thereby quashing and set aside the order dated 16.12.2022 in demolishing case No.17-D/XIII/22- 23, passed by Mr. Somenath Boral, Special officer (Building), Kolkata Municipal The Corporation being passed beyond authority.

c. A writ in the nature of certiorari permits a record. A writ in the nature of prohibition thereby restraining the respondent authorities from granting any regularize plan in favour of the private respondent.

2. Background:-

2.1. Petitioner is resident of premises no. 215B, Bhupen Roy road, Behala, Kolkata 700034 and his name was muted at with the Kolkata Municipal Corporation.

2.2. Private respondent no. 5 is also a resident of adjacent two storied building in the premises being no. 215A, Bhupen Roy road, Behala, Kolkata 700034, which was constructed without living any statutory space.

2.3. Petitioner made a complaint before the Kolkata Municipal Corporation with a prayer for demolishing the said unauthorized construction. K.M.C issued a red card on 04.10.2002 against private respondent herein requesting the officer in charge of Behala police station to take action against unauthorized construction. Again the said complaint dated 12.12.2004 was endorsed by Chairman, Borough 13 of K.M.C. and demolition proceeding was initiated against the said

unauthorized construction. After hearing of the said proceeding being no. D/Case No. 38D/2003-2004, K.M.C. directed respondent no. 5 to demolish the illegal toilet made in the 1st floor on the rare open side at his own cost and risk.

2.4. Private respondent has violated all relevant rules framed by the K.M.C by way of constructing internal door/ window and ventilator not opening directly to the adjacent building and ultimately built up a privy / bathroom/sanitary keeping window directly open to the bed room's window of the petitioner. In spite of the demolition order respondent no. 5 did not comply.

2.5. Non-compliance of the demolition order passed by K.M.C was brought to the notice of K.M.C by issuing letters dated 7.02.2014/24.02.2016/05.04.2016.

2.6. Official respondent failed to demolish the said illegal and unauthorized construction for which petitioner filed a writ petition being no. WPA no. 15856 of 2022. In the said writ petition Co-Ordinate Bench of

this Court handed down a direction upon the K.M.C to dispose of the letters mentioned above and to pass reasoned order upon giving opportunity of hearing to the parties.

2.7. In disposing that complaint, K.M.C located some unauthorized portion in the ground floor and permitted regularization vide order dated 16.12.2022 in connection with demolition case no. 38D/2003-04.

3. Case of the respondents:-

3.1. Respondents no. 2, 3, & 4/KMC officials filed affidavit in opposition denying all material allegations made in this instant application contending *inter alia* that the instant writ application is not at all maintainable as there is alternative remedy of preferring appeal under Section 400(3) of K.M.C Act.

Argument Advanced:-

4. Ld. Counsel, Mr. Ajit Kumar Chaubey, appearing on behalf of the petitioner has referred to the order passed on 15.12.2003

passed by Ld. Special Officer (Building) K.M.C. wherein special officer considered a complaint against opposite party no. 5, Gopal Chandra Dey and after hearing both side passed an order of demolition of toilet at the cost and risk of respondent no. 5 within one month from the date when order was passed.

- 5.** Mr. Chaubey has further submitted that toilet was removed but again constructed for which he was compelled to lodge a complaint before the K.M.C on 07.02.2014 alleging inter alia that respondent no. 5 again started construction of a bathroom in front of the bed room of the daughter of the petitioner causing difficulties to open the South facing window.
- 6.** Mr. Chaubey further submitted that the application dated 7th February, 2014 was not considered by the KMC authority and the petitioner had to approach this Court by filing a writ application being no. 15856 of 2022 wherein Hon'ble Co-Ordinate Bench in the order dated 28.09.2022 directed the concerned Executive Engineer to take necessary steps to deal with such unauthorized construction in accordance with law after giving opportunity of hearing to the parties.

7. Mr. Chaubey has also drawn my attention to the order dated 16.12.2022 passed in connection with Case No. 17-D/XIII/22-23 pursuant to the direction given in WPA No. 15856 of 2022. It is submitted that complaint regarding construction of toilet has not been considered let alone decision thereon.
8. LD. Counsel, Mr. Sabyaschi Bhattacharya appearing on behalf of the respondent no. 5 as well as Ld. Counsel, Gopal Chandra Das appearing on behalf of the K.M.C has contended that the impugned order passed by the Special Officer (Building) K.M.C. under Section 400/400(1) of the K.M.C. Act was assailable before the Building Tribunal within the meaning of provision of Section 400 (3) of the KMC Act.

Analysis:-

9. On careful perusal of the letter of complaints dated 07.02.2014, 22.02.2016 & 05.04.2016 addressed to KMC it appears that the petitioner repeatedly informed KMC regarding unauthorized construction of toilet/bath at the 1st floor. It further appears that prior to direction of this Hon'ble Court in WPA No. 15856 of 2022, KMC authority did not consider the prayer of the petitioner. Ultimately, a demolition case was registered

pursuant to the order of this Hon'ble Court but at the time of consideration, Special Officer, KMC only considered the unauthorized construction at the ground floor and that too was allowed to be retained subject to payment of specified fees and charges. In that order special officer KMC did not consider at all the construction of toilet/bath at the 1st floor which was not in compliance with the direction passed in WPA No. 15856 of 2022.

10. It is now settled proposition of law that mere availibility of an alternative remedy would not oust the jurisdiction of the High Court under Article 226 of the Constitution of India rendering a writ petition 'not maintainable'. It is further settled that a writ petition may be entertained if there has been a violation of the principles of natural justice, regardless of the availability of alternative remedies.

11. In this writ petition this Court finds that Special Officer (Building) KMC did not consider the successive complaints of the petitioner in spite of direction of this Hon'ble Court in WPA No. 15856 of 2022.

- 12.** In the aforesaid view of the matter, Executive Engineer Building/ Respondent no. 4 herein is directed to comply the order already passed by the Co-Ordinate Bench of this Court passed in WPA No. 15856 of 2022 with regard to complaint alleging construction of toilet in the 1st floor and pass an order after hearing both the parties to the case within a period of 8 weeks from the date of the communication of the order.
- 13.** With the aforesaid observations, Writ petition no. 11960 of 2023 stands disposed of.
- 14.** All parties to this revisional application shall act on the server copy of this order downloaded from the official website of this Court.
- 15.** Urgent Photostat certified copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

[BIBHAS RANJAN DE, J.]