

IN THE HIGH COURT AT CALCUTTA

(Constitutional Writ Jurisdiction)

APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

WPA No.13094 of 2023

Subhas Poddar

Vs

The State of West Bengal & Ors.

For the Petitioner

: Mr. Rabindra Kr. Jaiswal,
Ms. Manjula Paul.

For the KMC

: Mr. Debjit Mukherjee,
Ms. Susmita Chatterjee.

Hearing concluded on

: 20.09.2024

Judgment on

: 30.09.2024

Shampa Dutt (Paul), J.:

1. The Petitioner's case in the present petition is as follows :-

".....The petitioner is one of owners of building situated at premises no. 20/42/3, Biplabi Barin Ghosh Sarani, Kolkata – 700 067. He has been permanently residing with his family members at the said building and also at building situated at premises no.20/43, Biplabi Barin Ghosh Sarani, Kolkata-700 067.

The respondent no.6, without any lawful and valid sanction building plan of the Kolkata Municipal Corporation, with help of men and masons demolished existing 3 storied brick built old building and made construction of brick built masonry building, at adjacent building of petitioner being premises no. 20/49/2, Biplabi Barin Ghosh Sarani, Kolkata - 700067. Such new construction was carried out by the respondent no.6, without leaving minimum open space between two buildings, in violation of Rules and Regulations made for the purpose.

On 05.01.2021, in writing by letter dated 04.04.2021, sent by Speed Post entire matter was informed to the respondent nos. 2 to 5 and request was made to do the needful and see that no unauthorized illegal construction can be made by respondent no.6 in violation of Rules and Regulations made for the purpose at premises no 20/49/2, Biplabi Barin Ghosh Sarani, Kolkata-700067. It was further requested to take step to stop unauthorized and illegal construction and demolish unauthorized and illegal construction, done by the respondent no. 6 in the said premises.

The state respondents failed and neglected to take step to stop the said illegal unauthorized construction being made.

*Being aggrieved a **writ petition being WPA No. 5445 of 2021**, was filed in the Hon'ble High Court at Calcutta. The said writ petition came up for hearing on 29.11.2021. Kolkata Municipal Corporation submitted a report dated 08.03.2021, signed by S.A.E.(C) Bldg. Deptt., Br.III, KMC.A.E. (C) Bldg. Deptt., Br.III, KMC., E.E.(C) Bldg. Deptt., Br.III, KMC.*

It was mentioned in the said report that construction so far done was as per sanction permit under provision of Rule 3(2)(e) of Building Rule 2009, amended time to time.

That in the sketch plans submitted by the respondent no.6 at the time of hearing on 29.11.2021. Measurement of constructed area was not stated.

By a letter dated 14.01.2022 issued by E.E. (C) Bldg. Deptt. Br. III, KMC bearing no. B/192/III/21-22, the petitioner was informed that an inspection was held at site in question. But he was not given opportunity to present his contention.

The respondent no.6 purchased the house lying at said premises no 20/49/2, Biplabi Barin Ghosh Sarani, Kolkata-700067, built on land more or less 1 cottah 7.5 square feet having on the ground floor 350 square feet constructed area, on the first floor 350 square feet constructed area and on the second floor 250 square feet constructed area.

The respondent no.6, under guise of sanction permit for replacing existing staircase with new staircase head room within existing covered area of old building with some internal changes, demolished entire existing old structure and made

construction of new building having covered area of 704 square feet on Ground floor, 704 square feet on the First Floor and 704 square feet on the Second Floor i.e. being total covered area of 2112 square feet.

The petitioner states that body of experts consisting of Head of the department of Civil Engineering Jadavpur, Senior Chartered Structural Engineer may be constituted at cost of petitioner, if any for submitting report relating to said building on the aspect whether under guise of repairing permission, entire old house was demolished and new construction of entire building was made in violation of building rules and regulations without leaving minimum space required to be kept open.....”

2. On the parties being heard and on considering the materials on record, it appears that :-

- i) Affidavit in Opposition filed shows that the respondent no.6, has denied the entire case of the writ petitioner and his specific case is that he bought the house at the said premises sometime in November, 2019. The petitioner had been offered to purchase the house but the petitioner had failed to do so. Thereafter, with a view to carry out the re-construction of the staircase and entrance and also for the installation of a lift, the respondent no.6 had carried out a detailed survey of the entire house and property. Thereafter, the private respondent had applied for sanction before the Kolkata Municipal Corporation and on being satisfied the Kolkata Municipal Corporation had

accorded sanction to the respondent no. 6. After being accorded sanction, the respondent no.6 in accordance with the sanction plan had re-constructed only the staircase and entrance as marked in the sanction plan and had installed a lift. The respondent no.6 had also carried out painting works and other necessary repairing works for which no sanction was required. The entire building was never demolished and the old structure is still existing. It would be evident from the photographs that the old iron joist beams are still existing upon which the entire construction of the building is standing.

- ii) The said entire re-construction made by the respondent no.6 is in accordance with the sanctioned plan and there is no deviation from the sanctioned plan while making re-construction and that is an admitted position by the Kolkata Municipal Corporation. The executive Engineer and other officers of the Kolkata Municipal Corporation has visited the premises thrice and did not find any illegal or unauthorized construction as would be evident from the reports submitted by the Kolkata Municipal Corporation.
- iii) The petitioner have suppressed relevant material facts such as filing of another writ petition which has been deliberately done to suppress the fact that this Hon'ble Court has already held

that there is no illegal or unauthorised construction in the said premises.

- iv) **It would be evident from the writ petition that all three writ petitions have identical averments and two of the writ petitions have similar prayers. The prayers made in the instant writ petition are slightly modified and /or altered to create an illusory cause of action.**

3. In reply **the learned counsel for the petitioner has stated that he has no knowledge** of the earlier writ petition being W.P.O. No. 3002 of 2022 and upon enquiry made now, came to know that being aggrieved by and/or dissatisfied with the judgment and order dated 12th December, 2022 passed in W.P.O. No. 3002 of 2022 by the Hon'ble Justice Amrita Sinha, an appeal was preferred before Division Bench of this Hon'ble Court being numbered as A.P.O. No. 4 of 2023.

4. **From the materials on record, it appears that on the self same dispute:-**

- i) **WPA 5445 of 2021 was disposed of on 29.11.2021** with the following findings:-

"..... the petitioners allege that the respondent no.6 had made unauthorized construction on Premises No. 20/43, Biplabi Barin Ghosh Sarani, Kolkata-700067.

The Corporation has filed a report, from which it appears that the nature of construction was as per the permission granted by the

Corporation vide Permit No. B/06/III/2020-2021 dated October 5, 2020, allowing the respondent no.6 to replace the old existing stair case with new stair case and also the stair head room within the existing covered area of the building. From the report it also appears that the construction so far has been made in accordance with the permission granted to the respondent no.6. The report is taken on record.

The petitioners submit **that mandatory space** as required under the law **was not left** and a completely new construction has been made.

As the Corporation has already submitted a report indicating that so far **there has been no unauthorized construction and the reconstruction/repair has been done with the permission of the Corporation**, this Court does not think it necessary to keep the writ petition pending for further consideration.

As the petitioners have raised an objection before the Corporation, the Court is of the opinion that the contentions of the Corporation which has been urged before this Court should be intimated to the petitioner by disposing of the demand of justice made by the petitioners dated January 4, 2021, being Annexure P-3 to this application in accordance with law upon giving a hearing to the petitioners as also the respondent no.6. A reasoned order shall be passed and communicated to all concerned.....”

The writ petitioner was Swapan Kumar Poddar & Ors. and the learned counsel appearing for the petitioner was learned counsel, Rabindra Kumar Jaiswal.

- ii) The next writ petition on the self same issue being **WPO No. 3002 of 2002 was disposed of on 12th December, 2022** on the following findings :-

“.....The petitioner being neighbour of the premises No.20/49/2, B. B. Ghosh Sarani, Ward No.32, Br.-III of the Kolkata Municipal Corporation has alleged that the purchaser of the aforesaid premises has made construction in deviation of the plan sanctioned.

Kolkata Municipal Corporation has filed a report before this Court signed by the Sub-Assistant Engineer (Civil), Assistant Engineer (Civil), Executive Engineer (Civil)/Building Department, Br.-III, Kolkata Municipal Corporation on 8th December, 2022 mentioning that the premises was inspected on 8th December, 2022 and it was found that construction has been made as per sanctioned permit by replacing old existing stair with new stair and stair head room within the existing covered area of existing old building with some internal changes and installation of a lift well.

The report does not mention that any construction has been made in deviation of the sanctioned permit.

Since the allegation of the petitioner alleging unauthorized construction remains unsubstantiated, no relief can be granted to the petitioner in the instant writ petition.

The writ petition fails and is hereby dismissed.....”

The petitioner was one Biplob Chowdhury and the learned counsel for the petitioner was Mr. Rabindra Kumar Jaiswal.

- iii) Now, **the present writ petition has been filed being WP 13094 of 2023** again on the self same issue but by a different person as **petitioner being Subhas Poddar and the learned counsel once again is Mr. Rabindra Kumar Jaiswal.**

So the contention of the learned advocate Mr. Rabindra Kumar Jaiswal, that he had no Knowledge about the previous cases is unfortunately not correct.

- iv) Once again the Kolkata Municipal Corporation have submitted a report dated 13.07.24, stating that:-

“.....The present writ application has been filed by Subhas Poddar alleging unauthorized construction in the same premise being no. 20/49/2, B.B. Ghosh Sarani at the instance of Ashis Kumar Sasmal. On 14.05.2024, the E.E(C) along with S.A.E(C) inspected the premise and found the construction has been made “as per sanctioned permit by replacing old existing stair with new stair and stair head room within the existing covered area of existing old building with some internal changes and installation of a lift well”.....”

5. It thus appears that the petitioners in the writ petitions filed, (three) **are filing once case after another** on the self same facts and issue, not being satisfied with the steps taken by the KMC, more so as it appears, as per their wish and desire. Learned counsel for the petitioner has submitted that the order in WPA 5445 of 2021 dated 29.11.21 has not been complied with. But this is not the forum to challenge, non compliance of an order of a co-ordinate Bench.

6. **From the contents of the three writ petition it appears that the said cases have been filed on the self same issue and property through the same learned advocate by three different persons.**
7. Thus in view of the further report dated 13.07.24 filed by the KMC before this court, **the writ petition being devoid of merit stands dismissed, but with cost of Rs 50,000/- (Fifty thousand) to be deposited with the State Legal Services Authority, West Bengal,** the purpose being that there should be an end to such frivolous litigations in the garb of seeking justice.
8. All connected applications, if any, stand disposed of.
9. Interim order, if any, stands vacated.
10. Urgent certified website copy of this judgment, if applied for, be supplied expeditiously after complying with all, necessary legal formalities.

(Shampa Dutt (Paul), J.)