

ML. 59
22.04.2024
Court No. 24
A.G.M.

**In The High Court At Calcutta
Constitutional Writ Jurisdiction
Appellate Side**

W.P.A 17861 of 2023

**Md. Shoyeb Khan & Ors.
-versus
The Kolkata Municipal Corporation & Ors.**

**Mr. Soumik Das.
Mr. Rudranil Das.
... for the petitioners.**

**Mr. Chayan Gupta.
Mr. Souradeep Banerjee.
... For the respondent nos. 7 & 8.**

**Mr. Srijan Nayak.
Ms. Rituparna Maitra.
... For the K.M.C.**

**Mr. Avijit Sarkar.
Mr. Hemanta Kumar Das.
... For the State.**

The petitioners complain of change of use and unauthorised construction over the premises no. 83, Bondel Road, Ward No. 68, Borough No. VIII, under the KMC.

Objection filed against such unauthorised construction and change of use is alleged to be kept pending.

Learned advocate representing the private respondents submits, upon instruction that, an application was made before the Corporation seeking permission for change of use. As the figure mentioned for permitting such change was a big amount, representation was made by the private respondents, which is pending consideration.

As regards the unauthorised construction, it has been submitted that a fire escape has been constructed and the same is permissible in accordance with the laws framed by the Corporation.

In support of the fire escape staircase that has been constructed reliance has been placed on Regulation nos. 5 and 6 of the KMC (covered space) Regulations, 2017 published in the Kolkata Gazette Extraordinary on 1st April, 2017 which permits such construction.

As regards the change of use, the private respondents rely upon the KMC (Amendment) Act, 2014 published in the Kolkata Gazette Extraordinary on 9th January, 2015. It has been submitted that a doctor's consultation chamber falls within the permissible category of business activity in residential buildings. No further permission is required to be obtained for running the chamber from the subject building.

Learned advocate representing the Corporation has obtained instruction from the engineers signed on 8th February, 2024 which mentions that inspection revealed a B+G+IV storied building standing at the subject premises. On receiving a mass complaint regarding unauthorised construction in the rear open space and unauthorised change of use, a departmental inspection was conducted which revealed that a tin shed structure over the roof and a steel stair from the ground to the first floor of the rear open space was constructed without any sanction.

The entire building except the fourth floor has been used for non-residential purpose. Notice under Section 401 of the KMC Act was issued on 17th February, 2023 with intimation to the police.

The file was processed under Sections 400 (1) and 416 of the KMC Act, 1980. In due course, the unauthorised construction at the roof has been

demolished by the person responsible. The steel stair in the rear open space still exists and the use of the entire building except the fourth floor has been changed.

Further course of action in accordance with the KMC norms is under progress.

It appears from the submissions recorded hereinabove that the issue of unauthorised construction and change of use is pending consideration before the Corporation.

The Corporation is directed to take necessary steps to deal with the same in accordance with law.

An opportunity of hearing shall be granted to the parties prior to the matter being finally decided by the Corporation.

Steps shall be taken at the earliest but positively within a period of twelve weeks from the date of communication of this order.

The writ petition stands disposed of.

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

(Amrita Sinha, J.)