

30.07.2024
Sl.17.
Suman
Ct.No.15

WPA 28733 of 2023
With
CAN 1 of 2024

Tapas Kumar Manna
Vs.
The Kolkata Municipal Corporation and Ors.

Mr. Partha Sarathi Bhattacharyya
Mr. Raju Bhattacharyya
Mr. Prosenjit Mukherjee
...for the petitioner

Mr. Bratin Kumar Dey
Ms. Anjana Banerjee
Mr. Joydeep Das
Mr. P. Chattopadhyay
..for respondent no.9

Mr. Biswajit Mukherjee
Ms. Piyali Sengupta
...for KMC

To appreciate the factual matrix of this case, it is
necessary to quote the order dated June 14, 2024,
passed in this writ petition.

“It is an admitted position before this court that the petitioner has ownership in respect of the ground floor and at the 2nd floor of the building while the respondent no.9 is owner of the 1st floor of the said building.

The petitioner obtained a sanctioned plan for construction of a staircase to access the roof and also for reconstruction of concrete roof of the 2nd floor.

The Corporation declined the petitioner to carry out such construction work on the ground that a ‘No Objection certificate’ was not obtained from respondent no.9 being one of the co-sharers.

I am of the view that the petitioner being the owner of the 2nd floor should have been allowed to reconstruct the roof of the 2nd floor. However, construction of the staircase can only be carried out after obtaining the consent of the respondent no.9 being one of the co-owners. Respondent no.9 apprehends that if the existing asbestos roof of the 2nd floor is replaced by a concrete roof, the building may not bear the load and might collapse.

In light of the aforesaid fact, I direct the Corporation to depute a competent engineer to examine whether it will be permissible for the petitioner to construct a concrete roof on the 2nd floor of the building as proposed by him. Let such a report be filed before this court within two weeks from date.

List this matter after two weeks under the same heading.

The respondent no.9 also shall instruct as to whether she is agreeable to allow the petitioner to construct the staircase so that the roof can be accessed by both of them."

Today, the Corporation files its report.

The relevant part of the report is quoted below:-

"In 2nd floor, casting of roof slabs are almost completed except front portion. Now in my opinion the structure is safe & stable enough, if it is done as per sanctioned building plan, but unfortunately some extra portion of slab (at back portion), cantilever portions (at eastern side) & other portions, which have been casted beyond the sanctioned building plan, are not safe & stable enough for the said premises."

It has been submitted by Mr. Bhattacharyya, learned advocate appearing for the petitioner that his client will carry out the construction of the roof strictly in terms of the sanctioned building plan. He further undertakes to demolish the unauthorised construction as indicated by the Executive Engineer in his report filed before this Court today.

Respondent no.9 declines to give consent to construct the staircase. Therefore, I pass no order with regard to construction of the staircase.

I am of the view that construction of the staircase will be an exclusive access to the petitioner negating the right of the co-ownership of respondent no.9.

Accordingly, this writ petition is disposed of with the following directions:

- a) The writ petitioner shall demolish the unauthorised construction as indicated in the report of the Corporation submitted to this Court within a period of two weeks from the date of this order and shall inform the Corporation accordingly.
- b) Within three days of receiving the information from the petitioner, the Executive Engineer (C), Building Department, Borough -I, Kolkata Municipal Corporation, shall assign an officer to verify whether the writ petitioner has demolished the unauthorised construction in compliance with this order.
- c) If it is found that the petitioner has demolished the unauthorised construction, the Executive Engineer

shall immediately permit the petitioner to reconstruct the roof strictly in accordance with the sanctioned plan.

With the above directions, WPA 28733 of 2023 along with CAN 1 of 2024 is disposed of.

Urgent photostat certified copy of this order, if applied for, be supplied to the learned advocates for the parties on usual undertakings.

(Kausik Chanda, J.)