

ORDER SHEET
WPO No.81 of 2024
IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
ORIGINAL SIDE

BANANI DUTTA
VERSUS
THE KOLKATA MUNICIPAL CORPORATION & ORS.

BEFORE:
The Hon'ble JUSTICE AMRITA SINHA
Date: 8th February, 2024.

Appearance:
Mr. Raghunath Chakraborty, Adv.
Mr. Soumya Majumder, Adv.
Ms. Amrita De, Adv.
...For Petitioner.
Mr. Gurudas Mitra, Adv.
Mr. Swapan Kr. Debnath, Adv.
...For KMC.
Mr. Sujay Bandyopadhyay, Adv.
Mr. Shambhu Mahato, Adv.
Mr. Pradipta Siddhanta, Adv.
Mr. Subham Saha, Adv.
...For Respondent No.8.

The Court:-The matter relates to the unauthorized construction at premises no. 33A, Banamali Chatterjee Street, Ward No. 5, Borough-I under the jurisdiction of the Kolkata Municipal Corporation.

The grievance of the petitioner is that the Kolkata Municipal Corporation, without supplying any documents, is continuing with a hearing in connection with a demolition proceeding, issue whereof is pending consideration before the learned Municipal Building Tribunal.

It has been submitted that the order of demolition passed by the Special Officer (Building) of the Kolkata Municipal Corporation was carried in appeal before the learned Municipal Building Tribunal being B.T. Appeal No. 62 of 2023. By an order dated 17.03.2023 the learned Municipal Building Tribunal was pleased to reject the stay petition filed by the petitioner. The appeal, however, is pending consideration.

It has been submitted that during pendency of the appeal the Corporation has issued fresh notice of hearing without supplying any documents in respect of which the hearing is being conducted.

Contention of the petitioner is that as the appeal is pending, accordingly, the Corporation ought not to proceed with the hearing of the issue of unauthorized construction.

Learned advocate representing the Kolkata Municipal Corporation submits, upon instruction that, initially the unauthorized construction was two collapsible gates and one toilet in the roof of the said building. Two collapsible gates were demolished and the toilet was permitted to be retained subject to payment of necessary fees and charges. As the person responsible for raising construction failed to deposit the fees, accordingly, the Corporation demolished the toilet also.

The petitioner herein erected one sliding gate in the staircase in the third floor obstructing free movement in the stairs including access to the roof. The roof top reservoir has also been made inaccessible with lock and key.

The private respondent herein filed a writ petition before this Court being WPA No.21609 of 2023 which was considered and disposed of by this Court on 19.12.2023. The petitioner herein was duly represented in the said writ petition.

Direction was passed upon the Executive Engineer, Borough-I to consider the representation which was filed by the petitioner therein i.e., the private respondent herein [Krishna Gopal Sengupta] after giving an opportunity of hearing to all the necessary parties within the stipulated time period.

It has been contended by the Corporation that hearing that is currently being afforded to the parties is in terms of the direction passed by this Court on 19.12.2023.

It appears from the submissions made on behalf of the parties that even though the Corporation demolished the unauthorized construction but the private respondent during pendency of the appeal erected further

construction in the same manner. Objection was filed by the private respondent herein which has been directed to be considered by the Court. The Corporation has taken steps in terms of the direction passed by the Court and afforded opportunity of hearing to the parties. The Corporation is directed to conclude the proceeding to deal with the unauthorized construction in accordance with law.

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.)