

The petitioner and the private respondent no. 5 are co-tenants of the subject premises which is a waqf property. The petitioner occupies the first floor and the private respondent no. 5 occupies the second floor.

Protesting the illegal activity of the private respondent in constructing structures on the roof of the first floor without any sanction of the authority, the petitioner lodged complaint before the Corporation. As the complaint of the petitioner was not redressed a writ petition was filed before the Court being WP No. 839 of 2016. Order was passed in the said writ petition on 1st September, 2016 by directing the Corporation to initiate demolition proceeding as the Corporation issued notice under Section 400(1) of the KMC Act, 1980 and to conclude the same after affording opportunity to the parties to adduce evidence and by passing a reasoned order.

In compliance of the order passed by the Court demolition proceeding under Section 400(1) of the KMC Act, 1980 was initiated. The Special Officer (Building) passed order on 26th April, 2017 directing regularisation of the construction made subject to certain conditions namely production of a stability certificate from the KMC Empanelled Structural Engineer and to deposit the fees demanded. Challenging the said order, the petitioner filed a further writ petition being WP No. 739 of 2017 which was heard and disposed by the Court on 4th May, 2018 by setting aside the regularisation of the unauthorised construction made at the behest of a person who is not entitled to apply for sanction. The Court directed the Special Officer to complete the demolition proceeding in accordance with law.

As the order passed by the Court was not complied a further writ petition WP No. 586 of 2018 was filed. During the pendency of the said writ petition an application for review was filed by the respondent authorities for review of the order passed in WP No. 739 of 2017 being RVWO 2 of 2019.

The review petition was taken up for consideration by the Court and order was passed reviewing the order dated 4th May, 2018. The Court directed that the authorities will hear every person responsible for the unauthorised construction in accordance with law including the owner of the premises concerned. The writ petition being WP No. 586 of 2018 was disposed of by directing the authorities to conclude the proceedings within a particular time period.

In compliance of the direction passed by the Court the demolition proceeding was taken up for consideration afresh and after hearing the parties, order was passed on 24th October, 2019 once again regularising the unauthorised construction relying upon a communicating allegedly made by the landlady declaring that the person responsible obtained consent from her prior to making construction. The quantum of construction being 4.366 sq. mts., was treated as minor unauthorised erection or work.

Challenging the order of the Special Officer, the petitioner approached this Court once again by filing writ petition being WPO No. 270 of 2020 which was dismissed on 19th January, 2021 granting liberty to the petitioner to approach the appropriate forum for relief. Challenging the order of dismissal of the writ petition the petitioner preferred intra-court appeal before this Court being APOT No. 77 of 2021 which stood disposed of on 11th November, 2021 granting liberty to the petitioner to approach the statutory appellate forum.

The petitioner accordingly filed the statutory appeal being BT Appeal No. 52 of 2021 which was heard and dismissed on contest on 4th November, 2022.

The petitioner is aggrieved by the dismissal of the appeal and submits that the Tribunal ought not to have relied upon the consent letter allegedly issued by the landlady. It has been submitted that the tenant cannot apply for regularisation of an unauthorised construction. Strong suspicion arises with regard to the consent letter issued by the landlady particularly because of the fact that the said letter came into existence after nearly two years after the construction was made. The petitioner asserts that the letter of the landlady is a manufactured one.

It has been submitted that the relationship between the private respondent i.e the tenant responsible for making construction and the landlady is an acrimonious one and the private respondent deposits rent before the rent controller. In such a situation it is practically impossible that the landlady would come to the aid of the private respondent and issue letter of consent in respect of the construction made unauthorizedly.

It has been submitted that no opportunity was granted to the petitioner to cross-examine the landlady who allegedly issued the consent letter to the private respondent. The Tribunal with a preconceived notion, to regularize the unauthorized construction, failed to take into consideration that the subject structure is a very old one and the construction in question added extra load to the existing old building. The Corporation instead of

securing the old dangerous building has entertained the unauthorized construction and permitted regularization of the same.

The petitioner places reliance upon various provisions of the KMC Act, 1980 and the KMC Building Rules, 2009. Reliance has also been placed on the provisions of the West Bengal Premises Tenancy Act, 1997 to highlight that a tenant does not have any right to construct. Any person who does not enjoy the right to construct, do not have the right to seek regularization of the construction made.

Prayer has been made to set aside the order passed by the Municipal Building Tribunal and to direct the Corporation to demolish the unauthorized structure.

Learned advocate representing the Kolkata Municipal Corporation submits that the Special Officer (Building) considered the submissions made by the person responsible as well as the complainant. The inspection report was also taken into consideration. The letter by the landlady received in the office of the Kolkata Municipal Corporation declaring that the person responsible, before making the construction, reported the same to her and she did not raise any objection to such work, was also considered. The Special Officer clearly recorded that even though permission was obtained from the landlady prior to making construction but, admittedly, sanction was not taken for raising such construction. The quantum of construction being 4.366 sq.mts. was treated as minor unauthorized construction and directed to be regularized in accordance with the KMC (Regularization of

Building) Regulations, 2015 and permitted to be retained under Rule 4 of the said Regulations subject to certain preconditions. It has been submitted that there are several factual findings of the spot inspection report which were taken into consideration by the Tribunal at the time of disposal of the statutory appeal.

Prayer has been made not to interfere with the order of the Tribunal impugned in the present writ petition.

None entered appearance on behalf of the private respondent.

I have heard and considered the submissions made on behalf of the appearing parties.

It appears that as many as four writ petitions, one review petition, one intra court mandamus appeal, one statutory appeal before the Municipal Building Tribunal and twice proceeding before the Special Officer (Building) was initiated by the petitioner to demolish 4.366 sq.mts. of the construction made by a co-tenant of the subject premises. The first writ petition was filed by the petitioner in the year 2016 and even in the year 2024 the petitioner is still pressing for demolition of the said construction.

The order for regularization was made relying upon a letter issued by the landlady which, according to the petitioner, is a manufactured document. The Special Officer (Building) obviously did not have the expertise to ascertain the genuineness of the letter relied upon by the person responsible for making construction. At the same time, it is noted that throughout the entire proceeding or otherwise the landlady never appeared

or raised any objection against the construction made. In the present writ petition also, the landlady remains unrepresented. The Special Officer (Building), being conscious of the fact that the structure in question is an old one, directed the person responsible to furnish a stability certificate from a KMC Empanelled Structural Engineer and the retention was permitted subject to payment of the requisite fees.

It is true that a person who has the right to construct has the right to seek regularization of the construction made. Any person not authorized by law, but raises construction, cannot seek regularization.

In the instant case the demolition proceeding and the statutory appeal stood disposed of relying upon the consent letter given by the landlady. In fine, it is noted that the area of unauthorized construction is only 4.366 sq.mts. The same has rightly been held to be an unauthorized construction as it was made without sanction but, considering the small area of the construction made, the same was permitted to be regularized and retained subject to the conditions mentioned in the order passed. The Court under Article 226 of the Constitution of India ought not to enter or adjudicate trivial issues which stood conclusively decided by two fora relying upon the factual findings.

Relying on the legal maxim *de minimis non curat lex* meaning thereby that the law does not care for, or take notice of, very small or trifling matters, the Court is not inclined to exercise jurisdiction in this case. The

law does not concern itself about trifles. The valuable time of the Court ought not to be wasted in deciding trivial issues.

The Court is not inclined to interfere with the order impugned. The writ petition fails and is hereby dismissed.

Urgent certified photocopy of this judgment, if applied for, be supplied to the parties or their advocates on record expeditiously on compliance of usual legal formalities.

(Amrita Sinha, J.)