

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Original Side

Present :- Hon'ble Justice Amrita Sinha

WPO 1533 of 2023

Manas Kumar Biswas @ Ashoke Kumar Biswas
Vs.
The State of West Bengal & Ors.

For the writ petitioner	:-	Mr. Subir Sanyal, Adv. Mr. Sakya Sen, Adv. Mr. Biswajib Ghosh, Adv. Mr. Sumitava Chakraborty, Adv.
For the State	:-	Mr. Yash Vardhan Deora, Adv.
For KMC	:-	Mr. Alak Kumar Ghosh, Adv. Mr. Subhrangsu Panda, Adv.
For respondent no. 9	:-	Mr. Raghunath Chakraborty, Adv.
Hearing concluded on	:-	03.04.2024
Judgment on	:-	19.04.2024

Amrita Sinha, J.:-

The petitioner prays for implementation of the order of demolition dated 30th December 2021 passed by the Executive Engineer (Civil)/Building, Borough -III in respect of the construction of approximately 325 sq. mtr. at premises no. 84, Canal Circular Road and premises nos. 76/H/21, 76/H/22 and 76/H/23, Dr. S.C. Banerjee Road (formerly Beliagahta Main Road), Ward-33, Borough-III of the Kolkata Municipal Corporation within five days failing which the Corporation would demolish the same and recover the cost from the persons responsible for making

construction. The portion required to be demolished has been specifically demarcated in the order of demolition.

It has been submitted that though the time period stipulated in the order of demolition expired long back, but till date the Corporation has not taken any step to demolish the unauthorised construction.

The order of demolition has been issued to East City Promoters Pvt. Ltd., Satish Chandra Agarwal, Manas Kumar Biswas (writ petitioner) and Mangal Behari and copy forwarded to Bimal Prasad Sarda (private respondent), Durga Devi Sarda and Gouri Sankar Sarda.

Learned advocate representing the private respondent Bimal Prasad Sarda submits that the impugned order of demolition does not have an independent existence at present. The unauthorized construction which has been directed to be demolished already stood regularised by an earlier order passed by the Corporation permitting retention of the construction in question upon complying certain conditions one of which was to furnish NOC from the thika controller as required under the Thika Regulation, 2013. The Controller, Kolkata Thika Tenancy vide certificate dated 12th July, 2022 issued provisional NOC in respect of premises no. B/76/H/23 in favour of the private respondent along with four others.

It has been submitted that the Corporation has fairly conceded before the Hon'ble Division Bench in APO 112 of 2022 with IA GA 1 of 2022 with WPO 2 of 2022 in the matter of Bimal Prasad Sarda -vs- Kolkata Municipal Corporation & Ors. that the second demolition proceeding initiated in

respect of the same construction is misconceived and may be treated as non est in the eye of law. The submission of the Corporation has been clearly recorded in the order dated 9th March, 2022 passed by the Hon'ble Division Bench.

Attention of the Court has been drawn to the inspection report dated 23rd February, 2023 prepared by KMDA upon physical inspection of the premises being no. 84, Canal Circular Road and 76/H/21, 76/H/22 and 76/H/23, Beliaghata Main Road wherein it is specifically indicated that a portion of the land was acquired from 84, Canal Circular Road by the Land Acquisition Department in the year 1972 and proportionate land value was credited to the owner. As per demarcated site plan premises no. 84 has unauthorised one storied pucca structure. Premises no. 76/H/21, 76/H/22 and 76/H/23, Beliaghata Main Road was not found in existence within the KIT Scheme and also not in that area.

Attention of the Court has also been drawn to the report dated 13th March, 2023 of the Additional Land Acquisition Officer, Kolkata mentioning that out of 22 kathas and 9 chitacks comprised in premises no. 84, Canal Circular Road, an area of 2 kathas 2 chitacks and 5 sq. ft. was acquired for public purpose in the year 1972. Physical inspection of the residual portion of the premises no. 84, Canal Circular Road was identified but there was no existence of premises no. 76/H/21, 76/H/22 and 76/H/23, Beliaghata Main Road in and around the said plot.

Physical inspection was made by the Surveyor attached to the office of the Additional Land Acquisition Collector on 1st March, 2023 and the report of the Surveyor mentions that the face of the earth has undergone sea changes since the plot was acquired in 1972 and it has become virtually impossible to presently demarcate the boundaries of premises no. 84, Canal Circular Road out of which an area of 2 kathas 2 chitacks 5 sq. ft. was acquired for public purpose.

It has been submitted that two civil suits in between the petitioner and the private respondent are pending consideration in the learned Civil Court and till such time the property where the unauthorised construction has been detected is identified, the demolition order cannot be implemented.

Prayer has been made by the private respondent for dismissal of the writ petition.

Learned advocate representing the Corporation submits, upon instruction that, at this stage there is no scope for implementation of the order of demolition as the unauthorised construction was permitted to be retained.

I have heard and considered the submissions made on behalf of all the parties and have perused the materials on records.

The order of demolition which the petitioner seeks implementation of has been passed jointly in respect of two premises; 84, Canal Circular Road and 76/H/21, 76/H/22 and 76/H/23, Beliaghata Main Road.

It appears that there was an earlier order of demolition dated 16th March, 2004 passed in respect of unauthorised construction made at premises no. B/76/H/23. The Special Officer (Building) permitted retention of the said construction provided NOC from the Thika Controller is produced and subject to payment of the retention charges calculated by the department and further subject to the approval of the Dy. CMEB (North). The retention charges appear to have been paid. Provisional NOC by the Thika Controller has also been issued. The Corporation has submitted that the unauthorized construction has already been regularized.

Whether the unauthorised construction referred to in the proceeding initiated in the year 2003-04 and the proceeding initiated in the year 2021-22 is the same or not, cannot be readily ascertained from the documents available before the Court. There is also an issue with regard to the identification of the premises where the unauthorised construction has been detected in the year 2021-22.

The initial demolition proceeding of the year 2003-04 was in respect of only one premises, i.e. B/76/H/23; whereas the proceeding of the year 2021-22 is in respect of the premises nos. 84, Canal Circular Road and 76/H/21, 76/H/22 and 76/H/23, Beliaghata Main Road.

Until the premises where the unauthorised construction has been made is identified and detected, the Court is not in a position to pass order for demolition of the existing structure standing thereon. Reports from the office of the Thika Controller and the Additional Land Acquisition Collector

suggest that there is no independent existence of the premises nos. 76/H/21, 76/H/22 and 76/H/23, Beliaghata Main Road. Till the subject structure liable to be demolished, upon being found to be an unauthorised one is properly identified, order cannot be passed for demolition of the same.

From the report jointly filed by the Assistant Engineer (Civil), Chief Valuer and Surveyor Department and the Assessor Collector (North) signed on 20th February, 2024 it appears that there is an issue with regard to physical identification of the subject plot. The report clearly mentions that premises are generally defined and recorded in the Inspection Book based on physical possession and local information. There is mention of vesting of premises no. 84, Canal Circular Road. The map relied upon at the time of inspection was based on Smart's map prepared in the year 1912-13 and the concerned area has substantially changed at present. As per Smart's map, premises no. 76 is on the western side of premises no. 84, Canal Circular Road, but on joint inspection at site, the premises claimed as premises no. 76, was found on the northern of the premises no. 84, Canal Circular Road.

The petitioner has strenuously contended before the Court that the unauthorised structure is a demarcated and identifiable one and presses for implementing the order of demolition, but the Court is not satisfied with the identification of the subject property. It appears that there are several disputed questions of facts with regard to identification of the property which cannot and ought not to be adjudicated by the writ Court.

In view of the above, the prayer sought for by the petitioner cannot be allowed. The writ petition, accordingly, fails and is hereby dismissed. It will be open for the parties to approach the competent civil court for declaration, demarcation and identification of the subject plots in accordance with law, if so advised.

No costs.

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.)