

OD-1

ORDER SHEET

WPO/1808/2023

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
ORIGINAL SIDE

FUNCELL GAMES PVT. LTD.
Vs
THE KOLKATA MUNICIPAL CORPORATION AND ORS.

BEFORE:
The Hon'ble JUSTICE KAUSIK CHANDA
Date : 27th November, 2024.

Appearance:

Mr. Saptangsu Basu, Sr. Adv.
Mr. Kuldip Mullick, Adv.
Mr. Anil Chowdhury, Adv.
...for the petitioner

Mr. Alak Kr. Ghosh, Adv.
Mr. Gopal Chandra Das, Adv.
Ms. Manisha Nath, Adv.
...for the KMC

The Court: By filing this writ petition, the petitioner challenges the "review" order passed by the Hon'ble Mayor of the Kolkata Municipal Corporation on 28th August, 2023, whereby the Mayor directed to review of the regularization order dated 12th May, 2023, passed by the Special Officer (Building).

Mr. Saptangsu Basu, learned Senior Advocate appearing on behalf of the petitioner, submits that the Corporation has already accepted the fees for

regularization, and the Mayor of the Kolkata Municipal Corporation does not possess the authority to review the order issued by the Special Officer (Building). Mr. Basu further argues that, unless explicitly conferred by statute, the power of review cannot be exercised, citing *Patel Narshi Thakershi v. Shri Pradyumansinghji Arjunsinghji*, reported at 1971 (3) SCC 844.

This Court has previously held that the Mayor/Mayor-in-Council, who has been empowered to approve a regularization order passed by the Special Officer (Building) implicitly possesses the authority to withhold approval of an unauthorized regulation. Therefore, the Court does not accept Mr. Basu's contention that the Mayor/Mayor-in-Council lacks the authority to direct a review of the Special Officer's order.

Mr. Ghosh, learned Advocate for the Corporation, disputes the claim that the Corporation has accepted the fees for regularization. He submits that the money was accepted as a security deposit, in accordance with Circular No. 16 of 2021-2022, dated 02.03.2022.

The receipt issued by the Kolkata Municipal Corporation explicitly lists the following categories under which the money was accepted:

- “Charge for Regularization of Unauthorized Construction - Security Deposit 2330/233”
- “Drainage Development Fees - Security Deposit 2330/233”
- “Labour Welfare Cess - Security Deposit 2330/233”

- “Sketch Fees Only - Security Deposit 2330/233”

Mr. Basu argues that the petitioner has only deposited the regularization fees. However, I am unable to accept this contention. The receipt from the Corporation clearly delineates the categories under which the money was accepted. In the absence of any specific indication to the contrary, it must be construed that the Corporation has accepted the fees as security deposit in accordance with the Circular dated 02.03.2022.

Mr. Basu further contends that the Circular lacks statutory force and therefore does not apply to the petitioner. Unless the petitioner challenges the validity of the Circular, it cannot be argued that the money was not deposited in accordance with its terms.

In light of the above, I am not inclined to entertain this writ petition. It is, however, clarified that following the Mayor's order dated 28th August, 2023, if the Special Officer modifies the earlier order, the petitioner is at liberty to challenge such a modification in accordance with the law.

Accordingly, WPO/1808/2023 is dismissed.

(KAUSIK CHANDA, J.)

sg.