

M/L- 18
07/07/2025
Ct. No.-6
Aritra

C.O. 2407 of 2025

**Manoj Sonkar
Vs.
The Executive Engineer, Civil
[Borough II], Building Department,
Kolkata Municipality Corporation & Anr.**

Mr. Jagannath Ganguly
....for the petitioner

Mr. Sujit Banerjee
Mr. Nilay Sengupta
Ms. Sunanda Samanta
....for the opposite party No.2

Mr. Debjit Mukherjee
Ms. Priyanka Jana
...for the KMC

This application under Article 227 of the Constitution of India is at the instance of a subsequent purchaser of the impugned construction and is directed against an order dated April 28, 2025 passed by the Municipal Building Tribunal, Kolkata Municipal Corporation in Tribunal Appeal No.180 of 2023.

By the order impugned, the prayer for stay was rejected.

The learned advocate appearing for the petitioner submits that challenging the order of demolition passed by the Special Officer, Building, the petitioner has preferred an appeal before the Municipal Building Tribunal, Kolkata Municipal Corporation and unless an order of stay of operation of the demolition order is passed, the appeal will become infructuous. He further

submits that tomorrow (08/07/2025) is the date fixed for demolition of the impugned construction.

Mr. Mukherjee, learned advocate appearing for the Kolkata Municipal Corporation submits that the Municipal Building Tribunal after considering the fact that the impugned construction is an unauthorized one refused to pass an order of stay.

The learned advocate appearing for the private respondent submits that the construction is an unauthorized one and the same should not be allowed to stand even for a moment.

Heard the learned advocates for the respective parties and perused the materials placed.

It is not in dispute that in an appeal being A.P.O. No.101 of 2024 challenging an order dated June 24, 2024 passed in W.P.O. No.163 of 2024 the Hon'ble Division Bench in the order dated December 17, 2024 recorded that in order to avoid further controversy, the parties before the Hon'ble Division Bench was directed to produce the sanctioned building plan. It was the contention of the private respondents in the said appeal i.e. the petitioner herein that as he is a purchaser, sanctioned building plans is not with him. The Hon'ble Division Bench did not accept the stand of the petitioner herein. It was observed by the Hon'ble Division Bench that even if he is a subsequent purchaser, the necessity to obtain a sanctioned building plan continue to remain

and it was his duty to obtain the sanctioned building plan at the time of his purchase.

A demolition proceeding was initiated over the allegation of unauthorized construction of RCC slab at ground floor with the support of RCC column and the RCC column at the first floor at the impugned premises by the person responsible. In the D-Sketch it was indicated that there is an infringement of open space on all sides, infringement of floor area ratio (FAR), infringement of ground coverage and the total area of unauthorized construction is about 12.96 sq. mt.

The Executive Engineer (Civil), Building, Kolkata Municipal Corporation Borough-II recorded a finding that the petitioner herein has made a construction of RCC slab supported by RCC column at the ground floor and RCC column at first floor. It was further recorded that all the unauthorized constructions have been made without sanction plan.

On a query of the Court, the learned advocate appearing for the petitioner submits that since he is a subsequent purchaser, he does not have the copy of the sanction plan. The Municipal Building Tribunal took note of the submission of the respective parties and after considering the order passed by the Hon'ble Division Bench in the aforesaid appeal dismissed the application for stay of operation of the order of demolition upon arriving at a finding that there has been suppression of

fact regarding the sanction plan. Mere pendency of an appeal does not operate as a stay of operation of an order of demolition.

The petitioner claims that being the subsequent purchaser the petitioner does not have the sanction plan. The petitioner failed to make out any prima facie case for an interim order. The Municipal Building Tribunal assigned cogent reasons for rejecting the prayer for stay. For such reason, this Court is not inclined to interfere with the order passed by the Municipal Building Tribunal thereby rejecting the prayer for stay of operation of the impugned order.

However, on the prayer of the learned advocate for the petitioner, this Court is inclined to interfere with the imposition of cost upon the petitioner. The portion of the order dated April 28, 2025 imposing a cost of Rs.50000/- upon the petitioner stands deleted. It is however made clear that the other portions of the order dated April 28, 2025 is not interfered with by this Court.

With the above observation CO 2407 of 2025 stands disposed of.

There will be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(Hiranmay Bhattacharyya, J.)