

13.01.2025
Item No.8
Ct. No.15
S.A.

WPA 17429 of 2024

AGYG Deal Trade LLP

-vs-

Kolkata Municipal Corporation & Ors.

Mr. Aniruddha Chatterjee

Mr. Syed Nurul Arefin

Mr. Rahul Singh

Ms. Rashmi Binayak

Mr. Sanju Agarwal

...for the petitioner

Mr. Alak Kumar Ghosh

Mr. Arijit Dey

...for Kolkata Municipal Corporation

Mr. Subhrajit Chakraborty

...for respondent nos.6 to 8

The parties have filed their affidavits.

The petitioner applied for a sanctioned plan on January 9, 2023, for the construction of his residential building at premises No. 95, Diamond Harbour Road, Kolkata-700023. It appears that respondents Nos. 6 to 8 raised objections regarding the approval of the plan. However, the relevant Executive Engineer of the Corporation, after hearing both the petitioner and respondents Nos. 6 to 8, passed an order granting the petitioner's prayer for the sanctioned plan. The relevant part of the order is quoted below:

"So in the light of the above I am of the view that the objection raised by the objector regarding protection of his tenancy cannot be established by him by producing cogent documents related to tenancy in the said premises (tenancy agreement, rent

receipt etc.) nor he is in physical possession as tenant in the said premises, so his objection cannot be considered and thus rejected Whereas the applicant being the owner of the said property has submitted the court order wherefrom it reflects that the land is vacant land. So Court has rejected by not granting any injunction in favour of the objector. Moreover, the applicant has submitted sanction plan under section 393A where the owner deserved the right in respect of protection of the tenant and on inspection made by Assistant Engineer reflects that the property is a vacant land and is in possession of the owner with exclusive right for erection as per the KMC Building Rules, 2009. Hence, the matter may be processed for sanction in favour of the owner subject to other due formalities as per KMC Building Rules, 2009.

Hence that the matter is disposed in consultation with Law Department and concurrence of the Authority the sanction may be processed as per norms and copies to be served to both the parties.”

It appears that the Corporation, without giving the petitioner an opportunity to be heard, unilaterally cancelled the said order on May 19, 2023.

Subsequently, during the pendency of the writ petition, the Executive Engineer of the Corporation, by an order dated November 5, 2024, allowed respondents nos. 6 to 8 to erect a temporary structure of 360 sq. ft. at the said premises.

This Court finds it unnecessary to examine the merits of the order dated November 5, 2024. The original order, dated January 14, 2023, was passed after providing an opportunity for a hearing to both

the petitioner and respondents Nos. 6 to 8. The original order could not have been unilaterally revoked.

The petitioner should have been afforded an opportunity to participate in the hearing before the order dated November 5, 2024, was passed.

In light of this, both the orders dated September 5, 2023, and May 19, 2023, are hereby set aside.

The Corporation shall, however, be at liberty to pass the necessary order in accordance with the law, after providing the petitioner with an opportunity for a hearing, within three months from the date of this order.

This order does not preclude the petitioner from filing an appropriate application before the Civil Court where the suit is pending between the parties or from filing a fresh suit to enforce his rights, if any.

Accordingly, **WPA 17429 of 2024** is disposed of.

Urgent certified photocopy of this order, if applied for, be supplied to the parties on compliance of usual legal formalities.

(Kausik Chanda, J.)