

Sl. No.66
21.01.2025
Suman
Ct. 15

WPA 21058 of 2024

Smt. Shila Pal (Halder) and Ors.
Vs.
The Kolkata Municipal Corporation and Ors.

Ms. Chandrani Bhattacharya
..for the petitioners

Mr. Sandipan Banerjee
Ms. I. Bhattacharya
..for KMC

Mr. Soumyajit Mishra
..for respondent nos. 7 & 8.

Mr. Srijan Nayak
Ms. Rituparna Maitra
..for the State

Let the report filed by the State be kept on record.

The petitioners allege that respondents Nos. 7 and 8 have engaged in unauthorized construction without obtaining a sanctioned plan from the Kolkata Municipal Corporation. They claim ownership of the land on which the alleged construction is being undertaken.

In contrast, the learned advocate appearing on behalf of respondents Nos. 7 and 8 has drawn the Court's attention to an injunction order issued by a competent Civil Court in Title Suit No. 1573 of 2022. He contends that the Civil Court has already restrained the

petitioners from obstructing the construction work at the relevant premises.

The Corporation submits that it has issued a stop-work notice under Section 401 of the Kolkata Municipal Corporation Act, 1980, followed by a proceeding under Section 400(1) of the same Act.

In light of these facts, the learned advocate for the petitioners has relied upon a judgment passed by a Division Bench of this Court in APOT 177 of 2024, arguing that a Civil Court's injunction should not obstruct demolition proceedings initiated by the Corporation. The relevant excerpt of the judgment is as follows:

“The learned Judge has held that no order of injunction passed in any civil suit can restrain KMC from discharging its statutory duties and functions. Generally, that would be the correct principle of law. However, we need not dilate on the same since in the present case, there is no order of injunction against KMC or its officers. Hence, nothing prevents KMC from carrying out its statutory duties by removing the concerned unauthorized construction that it had detected.

We find no infirmity in the order under appeal. There should be zero tolerance for unauthorized constructions. Such illegal constructions destroy the entire ecology and upset the planned development of a town/city. Such constructions also put undue pressure on the civil amenities which are not equipped to cater to illegal constructions. No unauthorized construction should be allowed to stand even for a day.”

From the above, it is evident that the Division Bench's order, dated May 14, 2024, in APOT 177 of

2024, was passed in a case where no injunction had been issued by a competent Civil Court.

However, the petitioners did not disclose the order of the Civil Court in this writ petition. In this context, I am of the opinion that the petitioners cannot be permitted to pursue two separate proceedings simultaneously in relation to the alleged unauthorized construction.

In view of this, the present writ petition is disposed of without passing any further order, as there is an existing injunction order from a Civil Court.

This, however, shall not impede the Kolkata Municipal Corporation from discharging its statutory responsibilities. It shall also remain open for the parties to implead the Kolkata Municipal Corporation in the pending suit and seek necessary orders against the Corporation.

Accordingly, **WPA 21058 of 2024** is dismissed.

Urgent photostat certified copy of this order, if applied for, be supplied to the learned advocates for the parties on usual undertakings.

(Kausik Chanda, J.)