
(2020) 01 CAL CK 0041

In the Calcutta High Court

Case No : Writ Petitions (WP) No. 12144 (W) Of 2019

Ashok Das

APPELLANT

Vs

Kolkata Municipal Corporation & Ors

RESPONDENT

Date of Decision : 02-01-2020

Acts Referred:

Kolkata Municipal Corporation Act, 1980 — Section 2(5), 400, 450C

West Bengal Thika Tenancy (Acquisition and Requisition) Act, 2001 — Section 5(5)

Citation : (2020) 01 CAL CK 0041

Hon'ble Judges : Arindam Sinha, J

Bench : Single Bench

Advocate : Siddhartha Banerjee, Arkaprava Sen, Pijush Biswas, Ranajit Chatterjee, Paushali Banerjee, Malay Krishna De, Jyotshna Ray Mukherjee

Final Decision : Disposed Of

Judgement

Arindam Sinha, J

Mr. Banerjee, learned advocate appears on behalf of petitioner. He submits, his client is thika tenant in respect of hut identified as 'H/1' in the drawing at page 35 of the petition. An additional meter box room has been constructed against the wall of the hut in spite of contemporaneous objections raised by his client and unheeded by the Corporation. He relies on section 450C in Kolkata Municipal Corporation Act, 1980 and sub-section (5) in section 5, West Bengal Thika Tenancy (Acquisition and Requisition) Act, 2001 to submit, the construction must be demolished.

Mr. Chatterjee, learned advocate appears on behalf of the Corporation and submits, Calcutta Electric Supply Corporation (CESC) required the meter room. He hands up a photograph showing a raised room with blue door, which, Mr. Banerjee confirms, is the offending construction. Mr. Chatterjee submits, entitlement of petitioner to the hut is disputed. In any event the meter room is on the common passage and at a place, from which CESC is distributing supply of electrical energy to the huts. It is a raised room and, therefore, will not qualify

as a building under sub-section (5) of section 2 in the 1980 Act. As such, there should be no interference, far less a direction to demolish the room. His alternative submission, the matter be referred to the concerned Authority in the Corporation.

On query from Court Mr. Banerjee submits, CESC is not a necessary party. Question here is of unauthorised construction. Construction without sanctioned plan is unauthorised.

Section 450C provides for the Corporation as may sanction building plans submitted by one or more thika tenants, inter alia, for purposes of permanent construction including addition to an existing hut and also for construction of new structure, in a basti, as provided therein. Sub-section (5) in section 5 of the 2001 Act entitles thika tenants to construct pucca structures in accordance with building plan sanctioned under the 1980 Act. Sub-section (5) in section 2 of the 1980 Act gives meaning to 'building' to be a structure constructed for whatsoever purpose and of whatsoever material, to include foundation, plinth etc. Section 400 of that Act provides for, inter alia, order of demolition to include such order being made in respect of execution of work, going on or completed. Aforesaid provisions bring the meter room within their ambit, to be a construction, regarding which sanctioned plan has not been produced.

A further submission of Mr. Chatterjee is that the construction is a raised room without foundation or plinth and, therefore, not covered within said meaning of building. This submission is not accepted as meaning given to 'building' is a structure constructed for whatsoever purpose of whatsoever material, to include, inter alia, foundation, plinth etc. The alleged offending construction, if does not have foundation or plinth, is still a structure constructed by materials for purpose of housing electric meters.

For reasons aforesaid, the Corporation is directed to initiate proceeding under section 400 of the 1980 Act. The proceeding must commence and result in an order duly made, within eight weeks from date of communication of this order.

The writ petition is disposed of.