

(2014) 03 CAL CK 0157
In the Calcutta High Court
Case No : W.P. No. 5149 (W) of 2014

Kalipada Das

APPELLANT

Vs

Kolkata Municipal Corporation

RESPONDENT

Date of Decision : 18-03-2014

Acts Referred:

Citation : (2014) 3 CALLT 291 : (2014) 5 CHN 507 : (2014) 3 WBLR 922

Hon'ble Judges : Soumitra Pal, J

Bench : Single Bench

Advocate : Arindam Banerjee and Bharat Bhushan, Advocate for the Appellant;
Alok Kumar Ghosh and Debangshu Mondal, Advocate for the Respondent

Final Decision : Dismissed

Judgement

Soumitra Pal, J.—In the writ petition the petitioners have challenged the order dated 3rd January, 2003 passed by the Special Officer (Building), Kolkata Municipal Corporation in Demolition Case No. 90 - D/2002-03 (Borough - XIII) in respect of premises No. 294A, Raja Ram Mohan Roy Road, Kolkata - 700009 and the order dated 18th February, 2008 passed in B.T. Appeal No. 27 of 2003 by the learned Municipal Building Tribunal directing demolition and the order dated 26th December, 2013 passed by the Tribunal dismissing the application for review of the order dated 18th February, 2008. It is submitted by the learned advocate for the petitioner that since the Special Officer (Building) had directed retention of a part of the premises on payment of fees and as the neighbours are not affected by such construction, the Tribunal should have liberally considered the question of retention of the second and third floors. Moreover the municipal authorities failed to exercise discretion conferred u/s 400(1) of the Kolkata Municipal Corporation Act, 1980 (for short "the Act"). Submission is the Tribunal while disposing of the application for review did not consider the grounds, particularly the grounds 6(a) and 6(c), of the said petition. Learned advocate appearing on behalf of the Kolkata Municipal Corporation submits that since the entire building was constructed without having prior permission and in gross violation of the Act

and the statutory rules, orders passed are just and proper.

2. Heard learned advocates for the parties. There is no dispute that the entire building that is G+3, was constructed without sanction. In fact the petitioners in paragraphs 4 to 6 of the petition have candidly admitted the same and have stated that they were assured of post constructional sanction and regularisation on payment of charges. Since section 392 of the Act speaks of previous sanction of the Municipal Commissioner prior to raising a building, and section 393 postulates that every person who intends to erect a building shall apply for sanction by giving notice in writing of his intention to the Municipal Commissioner, and as regularisation of an unauthorised construction is not permissible except in cases u/s 413A of the Act relating to buildings constructed by persons displaced from Bangladesh (now East Pakistan), in my view there is no scope for exercising discretion u/s 400(1). The argument with regard to non-consideration of the grounds in the review petition is not tenable as the building was constructed without having sanction. In fact I fail to understand under what circumstances the Special Officer (Building), Kolkata Municipal Corporation, in an earlier proceeding, had directed retention of a part of the building on payment of fees as neither the Act nor the Rules permit such regularisation and/or retention which is also clear from a perusal of section 413A, as already noted. Therefore, there is no merit in the writ petition. Hence, the writ petition is dismissed. In the facts and circumstances, the Kolkata Municipal Corporation is entitled to costs of Rs. 10,200/-.

Urgent photostat certified copy of this order, if applied for, be furnished on priority basis.