
(2018) 12 CAL CK 0078
In the Calcutta High Court
Case No : Writ Petition No. 602 Of 2018

Sumita Mondal & Ors.

APPELLANT

Vs

State Of West Bengal & Ors

RESPONDENT

Date of Decision : 18-12-2018

Acts Referred:

Kolkata Municipal Corporation Act, 1980 — Section 400(1)

Citation : (2018) 12 CAL CK 0078

Hon'ble Judges : Debangsu Basak, J

Bench : Single Bench

Advocate : Debyojyoti Basu, A. Samanta, Nabi Choudhury, D. Mitra, A. Majumdar, T.M. Siddiqui, D. Ghosh

Final Decision : Disposed Off

Judgement

An order dated July 25, 2018 passed by the Deputy Chief Engineer (Building)/South is under challenge in the present writ petition.

Learned Advocate appearing for the petitioners submits that, the authorities assumed jurisdiction with respect of so called construction and passed a demolition order of such construction. Such authority has no jurisdiction to do so. He draws the attention of the Court to the fact that, there are eviction suits pending against diverse tenants. In the eviction suits, reports have been filed that were not taken into consideration.

The state and private respondents are represented.

The impugned order dated July 25, 2018 is a result of an order passed by the High Court in W.P. No.233 of 2014 on September 9, 2017. By the said order, the Deputy Chief Engineer (Building)/South of Kolkata Municipal Corporation was directed to consider the representation of the respondent no.7 dated November 11, 2013 and dispose of the same after affording opportunities of hearing to all interested persons within the time stipulated therein. The said representation alleges existence of unauthorised construction at the locale. The representation

dated November 13, 2013 was taken into consideration by the designated authority and after considering the materials on record and after affording an opportunity of hearing, the designated authority found that, there are unauthorised constructions. In that view of the matter, it directs the Executive Engineer (Building)/South in Borough VIII to take necessary action against such unauthorised construction.

There is no infirmity in the impugned order. The designated authority acted in terms of the order passed by the High Court. It adhered to the principles of natural justice while passing the order. The impugned order cannot be said to be perverse or said to be out of jurisdiction. The Executive Engineer (Building) was directed to take steps in accordance with law which would imply that, necessary proceedings under Section 400(1) of the Kolkata Municipal Corporation Act, 1980 are required to be initiated. Nothing is placed on record to suggest that the Executive Engineer (Building) has acted in terms of the order dated July 25, 2018. No proceedings under Section 400(1) of the Act of 1980 has been initiated.

In such circumstances, since there subsists a finding of unauthorised construction, and a direction has been given to the Executive Engineer (Building) to initiate proceedings for removal of the unauthorised construction, in accordance with law, it will be appropriate to direct the Corporation to initiate proceeding under Section 400(1) within a fortnight from date. The same should be concluded within 12 weeks thereafter. The authority will afford reasonable opportunity of hearing to the parties in such proceedings. So far as the contention that, there are reports filed by the Special Officers appointed by the Court in civil proceedings is concerned, such suits relate to eviction. The issue of unauthorised construction is required to be decided by the designated authority under the Act of 1980. There is no civil suit pending between the private parties relating to the subject matter of unauthorised construction which is required to be decided under the Act by the authority specified hereunder. Pendency of an eviction proceeding does not mean that, any party is entitled to make an unauthorised construction.

With the above directions W.P. No. 602 of 2018 is disposed of.

There shall be no order as to costs.