

(2014) 06 CAL CK 0017

Calcutta High Court

Case No: W.P. No. 15546(W) of 2014

Rajesh Verma

APPELLANT

Vs

Kolkata Municipal
CorporationRESPONDENT

Date of Decision: June 12, 2014**Acts Referred:**

- Calcutta Municipal Corporation Act, 1980 - Section 2(5), 390, 392, 393, 400
- Mumbai Municipal Corporation Act, 1888 - Section 351(2)

Citation: (2014) 4 CHN 409**Hon'ble Judges:** Soumitra Pal, J**Bench:** Single Bench**Advocate:** Raghunath Chakraborty, Advocates for the Appellant; Alok Kumar Ghosh, Sima Chakraborty and Gopal Chandra Das, Advocates for the Respondent

Judgement

Soumitra Pal, J.

In the writ petition, the petitioner has challenged the order dated 8th April, 2014 passed by the Municipal Building Tribunal, Kolkata Municipal Corporation upholding the order dated 21st June, 2010 passed by the Special Officer (Building) in Demolition Case No. 01-D/2010-11, Borough.-VI directing demolition of the premises. Mr. Chakraborty, learned advocate for the petitioner, assailing the order passed by the Special Officer (Building) and the Tribunal submits that as the notice dated 22nd April, 2010 issued by the municipal authorities regarding the extent of unauthorised construction is vague and as copies of the documents were not furnished and there was no policy as recorded in the order dated 21st June, 2010 passed by the Special Officer (Building) and as constructions of similar nature have been directed to be regularised on payment of fees and fine, appropriate order may be passed setting aside the orders under challenge and for de novo consideration of the matter. In this regard reliance has been placed on the judgments of the Apex Court in [Muni Suvrat-Swami Jain S.M.P. Sangh Vs. Arun Nathuram Gaikwad and Others,](#) . [Municipal Corporation, Ludhiana Vs. Inderjit Singh and](#)

[Another](#), and on the judgment of the Calcutta High Court in [Laddu Gopal Bajoria and Another Vs. The Kolkata Municipal Corporation and Others](#), in support of his submission.

2. Mr. Ghosh, learned advocate for the Kolkata Municipal Corporation submits as it is evident from the writ petition that the petitioner had carried out unauthorised construction by adding two floors without having sanction under section 392 of the Kolkata Municipal Corporation Act, 1980 ("1980 Act" for short) and had understood the notice dated 22nd April, 2010 and has prayed for regularisation of the unauthorised construction which is not permissible under the Act, orders passed by the authorities are just and proper.

3. Heard learned advocates for the parties. Perusing the writ petition I find that though the petitioner has challenged the orders passed by the Special Officer (Building) and by the Municipal Building Tribunal, however, by letter dated 17th October, 2012 he has prayed for regularisation of the said construction. Question also remains whether the construction in question is minor in nature or there has been minor deviation as stated in the petition. Looking at the definition of "building" under section 2(5) of the 1980 Act, I find it includes a "part of a building". Therefore, even a part of the building by whatever nomenclature it be called, - minor or major - is a building. Hence, even for erection of such building one has to obtain previous sanction under section 392 of the Act. In the absence of such previous sanction, the municipal authorities under section 400(1) of the Act have the power to direct stoppage of construction and demolition of such building. That section 400(1) does not confer discretion on the Municipal Commissioner to retain or regularise such unauthorised building is clear from the language of the said section 400(1) as it stipulates that "the Municipal Commissioner may," "make an order directing that such erection or work shall be demolished by the person at whose instance the erection or the work has been commenced or is being carried on or has been completed" (emphasis supplied) which is "in addition to any other action that may be taken under this Act", meaning thereby there is no jurisdiction of the Municipal Commissioner to exercise discretion for regularisation. The use of the word "may" in section 400(1) has to be read as "shall" as it casts an obligation on the authority to remove the unauthorised structure which is "in addition" to initiation of "action" under sections 610 and 619A of the 1980 Act. That the 1980 Act does not confer discretion to regularise a building is apparent from a reading of section 413A of the Act, introduced with effect from 4th December, 1995, as it confers jurisdiction on the Municipal Commissioner to regularise only those buildings raised in accordance with law by the persons displaced from East Pakistan (now Bangladesh) on certain category of plots of land under the jurisdiction of the Corporation. The building of the petitioner does not fall under such category. In my view if the argument of the petitioner for regularisation is accepted, in that event sections 390, 392, 393 and 400 and Rules 3, 41, 18 and 26 of the Kolkata Municipal Corporation Building Rules, 2009 shall be rendered otiose. In this context it is to be noted that Rule 3(2) of the 2009 Rules permits certain activities or constructions without having a permit. The case of the petitioner also does not fall under the said category. So far as the judgments of the Supreme Court in Muni Suvrat Swami Jain S.M.P. Sangh (supra) is concerned, the same

is not applicable to the facts of the case as therein section 351(2) of the Mumbai Municipal Corporation Act, 1888 was under consideration, whereas the provisions of the 1980 Act are different. The judgment in Municipal Corporation, Ludhiana (supra) is also not applicable as the Apex Court was considering the provisions contained in the Punjab Municipal Corporation Act, 1976, whereas 1980 Act not only prohibits raising of construction without sanction or permit but also does not allow regularisation of an unauthorised construction. The judgment in Laddu Gopal Bajoria (supra) is not applicable as the petitioner herein had understood the contents of the notice dated 22nd April, 2010, appearing at page 30 of the writ petition and had pursued the matter before the Special Officer (Building) as well as before the Tribunal and has admitted to have raised unauthorised construction. 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 assessed at Rs. 8,500/-.

4. No order as to costs. Urgent photostat certified copy of this order, if applied for, be furnished on priority basis.