

10. 30.11.2023  
bd. Ct.15

WPA 15410 of 2007

Amitabha Datta

-vs-

The Kolkata Municipal Corporation & Ors.

Sk. Zubair Ahmed ... for the petitioner.

Mr. Gopal Chandra Das ... for KMC

Mr. Amal Krishna Saha ... for respondent no. 6

The writ petition is presented by the landlord of 11B, S.R. Das Road, Kolkata, inter alia, challenging the order of the Special Officer (Building) dated 12<sup>th</sup> May, 2004 in Demolition Case No. 31-D/B-VIII/03-04 and the order of the Building Tribunal dated 12<sup>th</sup> March, 2007 passed on Building Tribunal Appeal No.76 of 2004.

The subject matter of dispute in the proceeding initiated before the concerned authority of KMC is construction of bath, privy and kitchen at one side of the aforesaid premises whether made by the petitioner being the landlord or the private respondent being the tenant. The Building Tribunal while dismissing the appeal preferred by the petitioner questioning the order of the Special Officer (Building) dated 12<sup>th</sup> May, 2004 made observations which is quoted below:

*“ According to Precies and other Departmental records, P.R /Respondent No. 4 unauthorisedly constructed Asbestos Room by covering*

*mandatory back open space as well as side space with brick wall 125mm thick at Ground floor. By the impugned construction, P.R violated Building Rules under Chapter XII of the CMC Act, 1980 viz., Rule 54,56,57,62, 109 & 110. Admittedly P.R/Respondent No. 4 is a tenant in the suit premises and the Appellant herein is the owner of the said premises who got his portion from her mother.”*

It transpires from the aforesaid observations made by the Building Tribunal that the respondent no. 6 being the person responsible unauthorisedly constructed asbestos room by covering mandatory back open space as well as side space which according to the Tribunal was reflected from the precis and departmental records. In contradistinction to these observations made by Building Tribunal on perusal of the order of the Special Officer (Building) dated 12<sup>th</sup> May, 2004 it appears that it was recorded that slope roofed structure meant for kitchen, bath and privy at the ground floor is occupied by tenant (respondent no.6) which was found to be standing at the site in question since inception of the tenancy i.e., 1963/1965.

On comparative perusal of the relevant parts of the orders passed by Special Officer

(Building) and the Building Tribunal it further transpires that in spite of making contradictory observations by the Building Tribunal under the heading “Findings With Reasons” relating to alleged unauthorised construction made by the persons curiously the Building Tribunal concurred with the decisions of the Special Officer (Building) dated 12<sup>th</sup> May, 2004 on the score that the order of the Special Officer is very lengthy order covering all aspects. The Building Tribunal while adjudicating the appeal preferred by the petitioner herein was required to follow twin tests of “why” and “what”. In this regard reliance is placed in the judgment of a coordinate Bench reported in **(2007)3 WBLR (Cal) 750 (Uniworth Resorts Limited -vs- Sri Ashok Mittal & Ors)**.

Strikingly in spite of making observation with regard to making alleged unauthorised construction which is contradictory to the observation made by the Special Officer (Building) in the order dated 12<sup>th</sup> May, 2004 the Building Tribunal vide impugned order dated 12<sup>th</sup> March, 2007 confirmed the order of the Special Officer (Building) without assigning cogent reasons. The Tribunal is required to express the reasons for the conclusion arrived at in its order which would act as bridge in between the facts of case considered by the Tribunal and the conclusion arrived at the final part of the order.

In above conspectus the order of the Building Tribunal dated 12<sup>th</sup> March, 2007 stands set aside.

The Building Tribunal Appeal No. 76 of 2004 as preferred by the petitioner herein stands revived.

The Building Tribunal is directed to hear the appeal afresh after granting opportunity of hearing to the petitioner as well as respondent no. 6 including other parties, if necessary, and dispose of the same preferably within a period of (16) sixteen weeks from the date of communication of this order.

With the aforesaid direction the writ petition stands disposed of.

There shall be no order as to costs.

True copy of affidavit-in-reply filed on behalf of writ petitioner is taken on record.

Urgent photostat certified copy of the order, if applied for, be given to the parties, upon usual undertakings.

**(Saugata Bhattacharyya, J.)**