

29.10.2021
Court No.6
Item No.23
PM

WPA 17434 of 2021

Ataur Rahman.

Vs.

The Municipal Commissioner, Kolkata Municipal Corporation & Anr.

(Through Video Conference)

Mr. Prasenjit Mukherjee

Md. Shakir

... For the petitioner.

Mr. Alok Ghosh

Mr. Subhrangshu Panda

... For Kolkata Municipal Corporation.

Affidavit of service filed in court today is taken on record.

The petitioner has challenged the notice dated October 5, 2021 issued under Section 400(1) of the Kolkata Municipal Corporation Act, 1980.

A bare perusal of the said notice do not indicate that any proceeding was initiated under Section 400(1) of the Kolkata Municipal Corporation Act pursuant to which the impugned notice directing demolition of the alleged illegal construction was issued.

Mr. Ghosh, learned advocate also could not apprise this Court as to whether any proceeding was initiated by the KMC authorities under Section 400(1) of the said Act.

In the absence of any adjudication by the competent authority under the Kolkata Municipal Corporation Act, 1980 that the impugned construction is an unauthorised one under Section 400(1) of the said Act, no discretion could have been issued to demolish the construction.

Thus the impugned notice dated October 5, 2021 is wholly without jurisdiction.

In view thereof the notice dated October 5, 2021 is set aside and quashed. This order shall not however, prevent the Kolkata Municipal Corporation from taking any action in accordance with law.

WPA 17434 of 2021 is allowed without however any order as to costs.

Urgent photostat certified copy of this order, if applied for, be given to the applicant upon compliance of requisite formalities.

(Hiranmay Bhattacharyya, J.)