ORDER SHEET

R.V.W.O. No. 12 of 2021
I.A. No.:GA/1/2021
Arising out of
W.P.O. No.153 of 2021

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
ORIGINAL SIDE

D and I Taxcon Services Pvt. Ltd.
Versus
Kolkata Municipal Corporation & Ors.

BEFORE:
The Hon'ble JUSTICE AMRITA SINHA
Date : 22nd July, 2021.

Mr. Tapas Dutta with Mr. Mritunjey Haldar, Advs.
… for petitioner
Mr. Ranjit Chatterjee with Mr. Mihir Kundu, Advs.
… for KMC
Mr. Suddhasatva Banerjee with Ms. Sanjucta Ray, Advs.
… for respondent no.6

The writ petitioner has filed the instant application praying for review of the order dated 8th April, 2021 passed in WPO/153/2021.

By the said order the writ petition of the petitioner stood dismissed. The writ petition was filed challenging the notice dated 14th July, 2020 annexed at page 19 of the General Application No. 1/2021 filed in connection with the Application for Review. The said notice was issued by the Executive Engineer of Kolkata Municipal Corporation, addressed to the "Person Responsible: Authorised Representative of Narolia Financial Advisory Ltd., added respondent as per WPO No.140 of 2019."

By an order dated 2nd March, 2020, a coordinate Bench of this Court directed the Kolkata Municipal Corporation to call for hearing of the petitioner and private respondents, including added parties. The notice which was issued on 14th July, 2020 to Narolia Financial Advisory Ltd., being the added party in the said writ application.

In terms of the order of the Court dated 2nd March, 2020, the Corporation heard the parties and thereafter the Corporation was of the opinion that a demolition proceeding ought to be initiated against the person responsible for making unauthorised construction. Accordingly notice under Section 400(1) of the Kolkata Municipal Corporation Act, 1980 was issued to Narolia Financial Advisory Ltd.

The review applicant submits that although by the order dated 2nd March, 2020, the Court directed the Corporation to hear all the necessary parties but even then, the Corporation could not have issued notice under Section 400(1) of the Kolkata Municipal Act, 1980 in favour of the Narolia Financial Advisory Ltd. The reason according to the petitioner for which the notice ought not to have been issued in favour of Narolia, is that the added respondent was no way responsible for making the unauthorised construction, as Narolia Financial Advisory Ltd. came into the picture long after the unauthorised construction took place.

The review applicant relies upon the explanation appended to Section 400 of the Kolkata Municipal Corporation Act, 1980. "The person at whose instance" as mentioned in the explanation, means the owner, occupier or any other person who causes the erection of any building or execution of any work to be done, including alteration or addition, if any, or does it by himself.

Admittedly, the private respondents are the present owners of the premises in question and even though they were not directly responsible for making the unauthorised construction, but at present they have stepped into the shoes of the owner, who at one point of time was responsible for making such unauthorised construction.

The unauthorised construction has to be dealt with in accordance with the provisions of the Kolkata Municipal Corporation Act, 1980. If the erstwhile owner made an unauthorised construction and thereafter sell the said portion in favour of a third party, in that case, the person who purchases the property with the unauthorised construction, becomes the person responsible for demolition of such unauthorised construction. If such an explanation is not accepted, then people will go on making unauthorised construction and thereafter transfer the same in favour of third parties and claim immunity for not removing the unauthorised construction, on the plea that they were not the person responsible for making such unauthorised construction and notice under Section 400(1) cannot be issued against them.

The Court on 8th April, 2021 held that there was not illegality in issuance of the notice upon the private respondent no.6. The Court still holds that there is no illegality in issuance of the said notice upon the private respondent no.6. There is neither any new fact, nor any error apparent on the face of the record which calls for review of the order under reference.

The prayer of the petitioner for review of the order dated 8th April, 2021 accordingly fails.

The review application stands dismissed.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties upon completion of usual legal formalities.

(AMRITA SINHA, J.)

K. Banerjee
A.R. [C.R.]