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ORDER SHEET

WPO No. 606 of 2021

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
ORIGINAL SIDE

SRIRUPA GHOSH
Versus
THE KOLKATA MUNICIPAL CORPORATION AND ORS.

BEFORE:

The Hon'ble JUSTICE SHAMPA SARKAR

Date : 22nd November, 2021.

[Via Video Conference]

Appearance:

Mr. R.N. Chakraborty, Adv.

Mrs. Amrita De, Adv.

...for the petitioner.

Mr. Ananjan Mitter (in person)

.....for the respondent no. 9.

Ms. Sanjukta Gupta, Adv.

Mr. Shubradip Roy, Adv.

Ms. Sananda Ganguli, Adv.

....for the respondent nos. 6, 7,8 and 10.

Mr. Alok Kumar Ghosh, Adv.

Mr. Fazlul Haque, Adv.

Mr. Subhrangsu Panda, Adv.

.....for the K.M.C.

The Court :- The demolition proceeding was initiated on the basis of an order of this Court. The Special Officer (Building) passed an order directing demolition of the entire unauthorized construction delineated in the D/sketch map.

Mr. Ghosh was directed by this Court to submit the D-sketch map in order to bring on record the unauthorized portions. Today D-sketch

map has been produced from which it appears that apart from the four covered garages, three GI shed structures have also been constructed unauthorizedly by encroaching upon the mandatory open space required to be maintained under the Kolkata Municipal Corporation Building Rules.

Mr. Mitter appearing in person for self and respondents Nos.6 to 8 and 10 has categorically submitted before this Court in all fairness that he takes responsibility for construction of four covered garages in front of the building on behalf of the respondent nos. 6 to 10. According to Mr. Mitter a structural engineer was appointed by the said respondents and some progress has been made in implementing the order by demolishing a small portion of the said area which is shown in the D-sketch map being the area marked in red on the ground floor. The comment of the Corporation with regard to the said construction on the D-sketch map is "All the internal and external walls were to be removed". Mr. Mitter undertakes to proceed with further demolition with the supervision of the structural engineer. He prays for some time to complete such demolition to the best of his ability. If Mr. Mitter is unable to implement the order with regard to these areas within three months, the Corporation shall take steps for such demolition in accordance with law. Cost of demolition be recovered from the said respondents.

Mr. Mitter further submits that in respect of the three areas marked as 'GI shed' the respondent nos. 6 to 10 do not take any responsibility except for two covered garages. He submits that these areas were covered by the owners association and either they or their

agents have been using the same. Mr. Mitter, however, submits that two car parking areas in the southern side covered by 'GI shed' are being used by the respondents Nos. 6 to 8 and 10. He submits that it shall not be possible for him to remove the said GI shed. Mr. Mitter will identify the GI shed garages which are being used by the said respondents and the Corporation shall demolish the same as per order of the Special Officer (Building) upon notice to all. As Mr. Mitter submits categorically that no appeal has been preferred and he undertakes to comply with this order of demolition with regard to all the covered garages and two of the GI shed structures, the Corporation shall proceed with the demolition in respect thereof. The petitioner is a member of the alleged owners association who had challenged the unauthorized construction and has sought for implementation of the entire order of the Special Officer (Building). Prayers have been made for demolition of the areas shown in the demolition sketch map. Such order includes the GI shed structures, as well, which have not been constructed by the respondent nos. 6 to 10 and none have taken responsibility for the same, apart from the two such sheds in the southern portion. As no appeal has also been filed from the order of the Special Officer (Building), the prayer of the petitioner is allowed directing the Corporation to demolish all the unauthorized GI shed structures upon notice in advance to all the parties. All costs for demolition shall be borne by the persons responsible.

All points with regard to the common space etc. shall be decided in the suit on evidence and the order of the special officer building shall not have any impact on the suit with regard to the nature character and size

of open space etc. The observations made in the order of the Special Officer (Building) at point no. 3 is set aside.

The writ petition is allowed accordingly.

(SHAMPA SARKAR, J)

snn.