

04
18.11.2022
d.p.

**In The High Court At Calcutta
Constitutional Writ Jurisdiction
Appellate Side**

W.P.A 24861 of 2022

**M/s. Mahabir Construction & Ors.
-versus
The Kolkata Municipal Corporation & Ors.**

**Mr. Aniruddha Chatterjee,
Mr. Iftekar Munshi.
...For the Petitioners.**

**Mr. Manoj Malhotra,
Mr. Suman Dey.
...For the State.**

**Mr. Srijan Nayak,
Ms. Piyali Sengupta.
...For KMC.**

The matter relates to the Premises No.8D, Bechulal Road, Ward-56, Borough-VII under the jurisdiction of the Kolkata Municipal Corporation.

The petitioners are aggrieved as the men and agents of the Kolkata Municipal Corporation arrived at the spot for demolishing the unauthorized construction of the building without serving any prior notice to the petitioners.

It has been submitted that neither any proceeding was initiated nor any notice was served upon the petitioners with regard to the demolition work.

Prayer has been made for restraining the respondent authorities from carrying out the demolition of the premises.

Learned advocate appearing for the petitioners admits that there is sanction for making construction of a four storied building (G+3).

It has been averred in the writ petition that 4th and 5th floors have already been constructed and flats on the 4th and 5th floors have been handed over to the petitioner Nos. 3 and 4.

The Kolkata Municipal Corporation has filed a report before this Court signed by the Sub-Assistant Engineer, Assistant Engineer and Executive Engineer (Civil)/Building, Borough-VII wherein it is mentioned that the person responsible has constructed two additional floors encroaching the mandatory open spaces over the sanctioned four storied building.

Stop work notice was issued under Section 401 of the Kolkata Municipal Corporation Act with intimation to the Officer-in-Charge, Topsia Police Station in February 2022.

The matter was processed and the Kolkata Municipal Corporation authority has approved demolition of the unauthorized construction under Section 400(8) of the Kolkata Municipal Corporation Act.

It appears from the submissions made on behalf of the parties that the petitioners had the sanction for making construction only upto the G+3 storey level. Two additional floors have been constructed without

obtaining any sanction from the Kolkata Municipal Corporation.

The Kolkata Municipal Corporation Act does not permit construction without a valid sanction plan. The petitioners having a sanction for making construction only upto the G+3 storied level and ought not to have made construction of two additional floors without obtaining any sanction/permission from the Corporation.

The conduct of the petitioners is absolutely illegal and impermissible in law.

According to the provisions of Section 400(8) of the Act, notwithstanding anything contained in chapter XXII if the Mayor-in-Council is of the opinion that immediate action is called for in relation to a building or a work being carried on in contravention of the provisions of this Act, it may, for reasons to be recorded in writing cause such building or work to be demolished forthwith.

In the present case admittedly construction has been made in contravention of the Act.

Submission has been made by the learned advocate appearing for the petitioners that an application for regularization of the two additional floors has been filed three days back and the same is pending consideration.

As on date, it is evident that there is no sanction for the additional two floors which have been constructed. The petitioners being guilty of making

unauthorized construction ought not to be given the benefit of holding on the said construction.

Showing any leniency to the petitioners will give a premium to unscrupulous and dishonest builders to make construction without a plan and thereafter seek post facto sanction of the construction made. Sanction is required to be obtained first and thereafter construction can be made. It is not the other way round that construction will be made first and thereafter sanction will be sought for.

The Court does not find any infirmity in the act of the Corporation in initiating steps for demolition of the unauthorized construction according to the aforesaid provision of law.

In view of the above, the Court refuses to exercise jurisdiction in the matter. No relief can be granted to the petitioners in the instant writ petition.

The writ petition fails and is hereby dismissed.

The instruction dated 16th November, 2022 filed in Court today be kept with the records.

Urgent photostat certified copy of this order be supplied to the parties, if applied for, as early as possible.

(Amrita Sinha, J.)