

OD-4

ORDER SHEET

WPO/1498/2022

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
ORIGINAL SIDE

DHARMENDRA SHAW

Versus

THE KOLKATA MUNICIPAL CORPORATION AND ORS.

BEFORE:

The Hon'ble JUSTICE SHAMPA SARKAR

Date : 16th March, 2022.

Appearance:

Mr. P.S. Deb Barman, Adv.

Mr. Amit Gupta, Adv.

Mr. S. Alam, Adv.

Mr. M. Ahmed, Adv.

For the petitioner.

Mr. Swapan Kumar Debnath, Adv.

Mr. S.K. Afazuddin, Adv.

For the K.M.C.

The Court :- Affidavit of service filed in Court be taken on record.

The petitioner is aggrieved by the silence maintained by the Kolkata Municipal Corporation after having issued the stop work notice under Section 401 of the Kolkata Municipal Corporation Act, 1980. The said stop work notice was issued on February 11, 2022 in respect of premises No. 5, Gopi Mohan Dutt Lane, Kolkata-700003. The petitioner is aggrieved because the Corporation has not taken any steps after issuing such stop work notice.

It is further submitted that the Corporation cannot maintain prolonged silence after having stopped the construction of the petitioner. The petitioner alleges to have suffered huge financial loss in view of the stoppage of work.

Mr. Debnath, learned Advocate appearing on behalf of the Corporation, submits that upon an inspection being held, a show cause notice was issued on March 2, 2022, and a hearing has been fixed.

This Court is of the opinion that the Corporation must follow a certain procedure while dealing with the unauthorized constructions. When a citizen is deprived of his right to property, even if the same is in accordance with law, his right to be present at the inspection cannot be denied. Before the show cause notice is issued and prior to the hearing, the party has to be apprised of the nature and extent of the deviation and the alleged violation of the building plan and rules, so that the party gets an opportunity to respond to the allegations of unauthorized construction.

Under such circumstances, this Court is of the opinion that the inspection, which was held by the Corporation, can at best be treated to be a preliminary inspection for arriving at the conclusion that there has been an unauthorized construction. However, the petitioner must be aware of the nature and extent of the unauthorized construction and an inspection must be held in the presence of the petitioner so that the violation and irregularities can be pointed out to the writ petitioner and/or his representative, at the time of inspection.

Under such circumstances, this Court is of the opinion that the Corporation must proceed afresh and dispose of the demolition case in the following manner:-

- a) The Corporation shall cause an inspection of the premises in question upon notice to the petitioner.
- b) Upon holding the inspection, the Corporation authorities shall prepare an inspection report with the sketch map indicating the nature and extent of the unauthorized construction. Copies of the inspection report and sketch map shall be handed over to the petitioner.
- c) Petitioner will be entitled to file his written objection/written version to the said report and also adduce oral and documentary evidence in support of his contentions.
- d) A reasoned order shall be passed and communicated to the petitioner upon giving an opportunity of hearing.
- e) Upon conclusion of the proceeding, the corporation shall take steps in accordance with law and reach the matter to its logical conclusion.

In addition to the show cause notice already served, the process as directed hereinabove shall be followed. The show cause notice already served shall be treated as a part of the proceedings. The entire issue shall be decided and disposed of by any of the Special Officers (Building) of the Corporation and not by any Executive Engineer.

The Court is of the opinion, that justice would be sub-served, if the demolition proceeding is disposed of in accordance with law by a Special Officer (Building), of the Corporation.

The Circular dated March 2, 2022 as far as applicable to the petitioner, shall be adhered to by the petitioner.

Accordingly, WPO/1498/2022 is disposed of.

Parties to act on the server copy of this order.

(SHAMPA SARKAR, J)

snn.