

OD-4

ORDER SHEET

WPO/1550/2022

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
ORIGINAL SIDE

MD. EHTESHAM UDDIN
VERSUS
KOLKATA MUNICIPAL CORPORATION AND ORS

BEFORE:

The Hon'ble JUSTICE SHAMPA SARKAR

Date : 22nd March, 2022.

Appearance:

Mr. Arif Ali, Adv.

Mr. Sarban Bhattacharjee, Adv.

...for the petitioner

Mr. Manoj Malhotra, Adv.

Mr. Sagnik Chatterjee, Adv.

...for the State/respondent

Mr. Ranajit Chatterjee, Adv.

Ms. Piyali Sengupta, Adv.

...for the KMC

The Court:- The petitioner has alleged that some unknown persons with the connivance of the respondent nos. 12 and 13 have raised some unauthorized constructions at premises No. B-43/H/6 Canal East Road, P.S. Narkeldanga, Kolkata-11; 45/B/H/3 Canal East Road, P.S. Narkeldanga, Kolkata-11 and also 12H/1 Kasai Bustee 1st Lane, P.S. Narkeldanga, Kolkata-11 all under Ward No.29, Borough-III. According to the petitioner, the respondent nos. 12 and 13 are officials of

the State of West Bengal and the Kolkata Municipal Corporation respectively. According to this Court, the complaint against the activity of the respondent nos. 12 and 13 are to be dealt with by their employers in accordance with law. Liberty is granted to the petitioner to approach the employers of the said respondents with his grievances.

This Court has not expressed any opinion with regard to the allegations against such persons.

This Court finds that the petitioner is not aware of the persons who are responsible for the alleged unauthorized constructions. It is submitted that rampant constructions have been going on in the three premises in question, by some unknown persons. The orders of the Corporation have been flouted and these premises are being sold to innocent and illiterate persons at exorbitant rates involving cash transactions. The petitioner is a resident of the area and submits that such constructions have affected the structural stability of the buildings, have destroyed the systematic planning of the locality and have also put a huge burden on the civic amenities supplied by the Kolkata Municipal Corporation.

Learned advocate for the Corporation submits that in respect of premises no. B-43/H/6 Canal East Road, P.S. Narkeldanga, Kolkata-11, a stop work notice had been issued as some new constructions had been found. An intimation has been given to the police authorities. The police

authority also confirmed such submission, by filing a report. The report is taken on record.

With regard to the two other constructions, it is submitted by the Corporation that no new constructions had been detected, but the age of the building or age of the construction have not yet been ascertained. With regard to construction on premises no. 12H/1 Kasai Bustee 1st Lane, P.S. Narkeldanga, Kolkata-11, Narkeldanga P.S. Case no. 190 dated August 11, 2017 under Section 401A of the KMC Act and Narkeldanga P.S. Case no.69 dated March 23, 2018 under Section 401A of the Kolkata Municipal Corporation Act had been initiated by the police and the said proceedings have culminated in the filing of two separate charge sheets.

In view of the above facts as transpired from the records and on the submissions of the learned advocate for the Corporation as also the State, it appears that there has been some unauthorized constructions on the premises in question, at some point of time. This Court is of the opinion that the Kolkata Municipal Corporation must proceed to dispose of the complaints of the petitioner annexed to the writ petition in accordance with law.

In doing so, the Corporation shall adhere to the following procedure:-

- a) The Corporation shall cause an inspection of the three premises in question, upon notice to the petitioner as also the persons responsible.
- 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 parties.
- c) Parties will be entitled to file their written objection/written version to the said report and also adduce oral and documentary evidence in support of their contentions.
- d) A reasoned order shall be passed and communicated to the parties 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.

The entire exercise should be completed within a period of eight months from the date of communication of this order.

As the Corporation was not informed by the petitioner about the identities of the persons responsible for such construction, the notices of inspection and hearing shall be served by the Corporation by affixation at the three premises in question and shall also be handed over to any

person who shall be found in the three premises during service of such notice. Such service shall be treated as good service.

The police authorities are directed to ensure that unauthorized constructions do not take place at the present moment.

It is also made clear that this Court has not gone into the merits of the claim of the petitioner.

The proceedings shall be restricted to the allegations of unauthorized construction. The question of title and encroachment shall not be gone into by the Corporation.

WPO/1550/2022 is disposed of accordingly.

All parties are to act on the basis of the server copy of this order.

[SHAMPA SARKAR, J.]