

OD-1

ORDER SHEET

WPO/1390/2021

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
ORIGINAL SIDE

SUSHMA SINGH & ANR.
Versus
KOLKATA MUNICIPAL CORPORATION & ORS.

BEFORE:

The Hon'ble JUSTICE SHAMPA SARKAR

Date : 14th February, 2022.

[Via Video Conference]

Appearance:

Mr. Saptangsu Basu, Sr. Adv.

Mr. Nirmalya Dasgupta, Adv.

Mr. Rajesh Upadhyay, Adv,

For the petitioners.

Mr. Manas Kumar Ghosh, Adv.

Ms. Susmita Dey Basu, Adv.

Mr. Kaustav Ghosh, Adv.

For the respondent nos. 6 & 7.

Mr. Gopal Chandra Das, Adv.

Mr. Rudranil De, Adv.

For the K.M.C.

The Court :- This writ petition has been filed challenging a 'stop work' notice issued under Section 401 of the Kolkata Municipal Corporation Act, 1980. On the basis of prima facie observations of the authority, that some unauthorized construction had taken place at premises No. 40A, Mohendra Gossain Lane under Ward 026, Borough-IV, such notice was issued. The description of the unauthorized construction has been provided in the notice, namely, construction of RCC frame structure with foundation, columns & beams by completely

demolishing the existing old three storied building and thereby violating the building sanction plan.

Mr. Basu, learned Senior Advocate appearing for the petitioners, submits that notice was issued without recording the factual satisfaction of the authority which led to such conclusion and consequent issuance of the notice of the stop work. No inspection had been made. He further submits that the report filed before this Court was vague and lacking in material particulars. The nature and extent of violation has not been pointed out. According to Mr. Basu, unless the authorities were satisfied that there had been violation of the law and the building had been constructed in violation of the sanction plan and the rules, such stop work notice could not be issued.

Mr. Das, learned Advocate appearing on behalf of the Kolkata Municipal Corporation submits that under the garb of reconstruction of the dilapidated structure and the repairing work, the petitioners have demolished the entire structure and started rebuilding the same. This, according to Mr. Das, was the violation.

Heard the learned Advocates for the parties. The contention of Mr. Basu, learned Senior Advocate, is not accepted. The authorities on, prima facie, finding that there were some unauthorized construction, issued a notice which they were permitted to do under the law. The notice is at page 65, Annexure-P6, to the writ petition. It clarifies that the sanction was given to the petitioners under Section 3(2)(e) of the Kolkata Municipal Corporation Building Rules, 2009, but by violating the Rules

the construction of RCC frame structure with foundation, columns & beams etc. have been raised by the petitioners upon demolishing the existing old three stories.

This Court is not required to adjudicate the correctness of the description of the unauthorized construction as contained in the notice at this stage. This notice has been issued by the competent authority upon the persons who had been found to have raised some unauthorized construction. The petitioners will get adequate opportunity to explain their stand and put forward their answers to the said notice, before the authority. The Court is not an expert to adjudicate the issues which are raised by Mr. Basu by placing reliance on the sanction plan. The Commissioner, Executive Engineer and other delegates are empowered under the law to adjudicate such issues and take a reasoned decision thereby reaching the proceedings either to its logical conclusion or by withdrawing the notice.

The report, which is filed before this Court, is a cryptic one and the Court directs that such report shall not be given any importance at the time of final adjudication of the issues involved.

Under such circumstances, the writ petition is disposed of.

The petitioners are entitled to approach the authorities by answering to such report and satisfy the authority that the stop work notice was wrongly issued. If the authorities initiate demolition proceedings, the same shall be conducted upon holding an inspection in the presence of the petitioners. The report of the inspection indicating

the nature of unauthorized construction shall be supplied. The entire proceeding must be carried on, upon observance of the principles of natural justice. The authority cannot keep the construction in a state of suspended animation, but must dispose of the matter expeditiously.

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

(SHAMPA SARKAR, J)

snn.