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ORDER SHEET

WPO No. 2468 of 2022
IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
ORIGINAL SIDE

ROMEO DAS
VS
THE KOLKATA MUNICIPAL CORPORATION AND ORS.

BEFORE:
The Hon'ble JUSTICE AMRITA SINHA
Date : 1st September, 2022.

Appearance:
Mr. P.S. Deb Barman, Adv.
Mr. Amit Gupta, Adv.
Ms. Debangana Dey Nayak, Adv.
. . .for the Petitioner.

Mr. Swapan Kr. Debnath, Adv.
Mrs. Paramita Paul, Adv.
. . .for the KMC.

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

The matter relates to the premises No.B/11/H/8, Dr. Suresh Chandra Banerjee Road, Ward-34, Borough-III under the jurisdiction of the Kolkata Municipal Corporation.

The petitioner, without obtaining any sanction from the Kolkata Municipal Corporation, has constructed a G+3 storied building.

The Kolkata Municipal Corporation took steps for demolition of the said building and a complaint was lodged before the police. Pursuant to the FIR lodged before the police, a proceeding was initiated before the Senior Municipal Magistrate, Kolkata in connection with offence under Section 401A of the Kolkata Municipal Corporation Act, 1980 being case no.2773 of 2016 (State Vs. Romeo Das & Ors.). The Senior Municipal Magistrate, Kolkata by a judgment dated 6th February, 2020 passed an order for demolition of the unauthorized construction and also for payment of fine.

The petitioner herein challenged the same before the Additional Sessions Judge, 1st Fast Track Court, Bichar Bhawan, Calcutta in Criminal Appeal No.76 of 2020. The learned Appellate Court by a judgment dated 23rd February, 2022 allowed the appeal in part, on contest. Direction was passed upon the Senior Municipal Commissioner to demolish the unauthorized construction by observing the prescribed procedure.

After the order was passed by the learned Appellate Court, the Executive Engineer of the Building Department issued notice under Sections 544 and 546 of the Kolkata Municipal Corporation Act, 1980 on 20th August, 2022

fixing 26th August, 2022 as the date for demolition of the unauthorized structure.

The petitioner filed the instant writ petition challenging the said notice issued under Sections 544 and 546 of the Kolkata Municipal Corporation Act, 1980.

It is the specific case of the petitioner that the Municipal Magistrate does not have the power to pass an order of demolition. It has been contended that the issue whether the Municipal Magistrate can order demolition is pending consideration before the Hon'ble Division Bench of this Court. Reference has been made to the order dated 22nd August, 2022 passed by the Hon'ble Division Bench of this Court in MAT 1183 of 2022 + IA No: CAN/1/2022 (Amar Roy Vs. The Kolkata Municipal Corporation & Ors.) wherein the Court directed the matter to be referred to the Hon'ble Division Bench which is in seisin of the issue for adjudication.

The petitioner prays for referring the present writ petition to the Bench, which is in seisin of the matter and is deciding the issue.

Learned advocate representing the Kolkata Municipal Corporation submits that the entire structure was constructed without obtaining any plan sanctioned from the Kolkata Municipal Corporation.

The petitioner has relied upon several circulars issued by the Kolkata Municipal Corporation from time to time permitting construction over thika property and thereafter for regularisation of the same.

According to the provision of the Kolkata Municipal Corporation Act, 1980, no construction can be initiated without obtaining a plan sanctioned from the Kolkata Municipal Corporation. In the instant case, a G+ 3 storied structure was constructed without obtaining any sanction from the Kolkata Municipal Corporation. It appears from the judgment passed by the learned Appellate Court below that notices have been issued under Sections 401 and 401A of the Kolkata Municipal Corporation Act, 1980 and a complaint was lodged before the police.

The matter travelled up before the Municipal Magistrate. The Municipal Magistrate invoked the provision of Section 584 of the Kolkata Municipal Corporation Act, 1980 whereby power has been vested upon the Municipal Magistrate to demolish any unlawful work.

The matter was dealt with in details by the learned Municipal Magistrate, Kolkata and by the Additional Sessions Judge, 1st Fast Track Court, Calcutta, that is, the Appellate Court. Evidences of the parties were taken into consideration. The learned Appellate Court has taken note of the fact that the accused admitted the illegal construction that has been made. The notices

issued under Sections 401 and 401A of the Kolkata Municipal Corporation Act, 1980 were also produced before the learned Court below.

The learned Courts below took note of the physical inspection report wherefrom it revealed that the accused constructed RCC columns in the ground floor with RCC staircase and wooden shuttering without any sanctioned plan. The Court took note of the fact that the construction has been made in a very congested area on a narrow lane and if the construction is allowed to stand/continue, it might cause hazards like fire, traffic disruption, problem of drainage and water supply.

The Court was of the opinion that the construction that has been made is unauthorized as the same was made without obtaining any sanction from the Kolkata Municipal Corporation and the act comes within the category of the offence punishable under Section 401A of the Kolkata Municipal Act, 1980.

Though the Hon'ble Appellate Court set aside the part of the order where direction has been made for payment of fine, in default, simple imprisonment, but affirmed the direction upon the Municipal Commissioner to demolish the unauthorized construction. The aforesaid judgment was passed upon a contested trial after hearing all the parties.

If the petitioner is aggrieved by any order that has been passed by the Appellate Court in the appeal, then the petitioner ought to approach the proper forum for remedy.

The competent authority of the Kolkata Municipal Corporation issued notices under Sections 544 and 546 of the Kolkata Municipal Corporation Act, 1980 in compliance of the direction that has been passed by the learned Appellate Court below. It does not appear that there is any error apparent on the face of the record by which the Kolkata Municipal Corporation invoked the jurisdiction to issue the impugned notice.

Learned advocate for the petitioner stresses on the fact that no order under Section 400(1) of the Kolkata Municipal Corporation Act, 1980 was issued upon the petitioner. The said submission is disputed by the learned advocate representing the Corporation.

Writ Court being a Court of equity cannot shut its eyes to the act of a litigant who has made construction of a G + 3 storied building without obtaining any sanctioned plan at all. The submission of the learned advocate for the petitioner that the construction may be regularized pursuant to the circulars issued by the Kolkata Municipal Corporation cannot be accepted by the Court. The Act stands as a bar to raise construction without obtaining any sanctioned plan.

In the present case, a G+ 3 storied building has been constructed and submission has been made that the same may be regularized after the construction is made and after an order of demolition has been passed. The act of making unauthorized construction without a sanctioned plan is a complete defiance of the provision of law and has to be reviewed seriously. Such illegal act has to be dealt with a firm hand without showing any sympathy or leniency. A litigant who seeks protection of law ought to act in accordance with law. The Court is not inclined to exercise jurisdiction in the matter.

The writ petition fails and is hereby dismissed.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties upon compliance of all legal formalities.

(AMRITA SINHA, J.)