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ORDER SHEET

WPO No. 2489 of 2022
IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
ORIGINAL SIDE

MILAN KUMAR BANERJEE
-Versus-
KOLKATA MUNICIPAL CORPORATION & ORS.

BEFORE:
The Hon'ble JUSTICE AMRITA SINHA
Date: 6th September, 2022.

Appearance:
Mr. Raghunath Chakraborty, Adv.
Mr. Bratin Kumar Dey, Adv.
Mrs. Anjana Banerjee, Adv.
..for Petitioner.
Mr. Ranajit Chatterjee, Adv.
Mr. Arijit Dey, Adv.
..for KMC.
Ms. Nilofer Siddique Alam, Adv.
..for Respondent nos. 4 & 5.

The Court:-The notice dated 27th August, 2022 under Sections 544 and 546 of the Kolkata Municipal Corporation Act, 1980 issued to the owners and occupiers of the premises No. 30/1E, Latafat Hossain Lane, Ward-34, Borough-III of the Kolkata Municipal Corporation is under challenge in the instant writ petition.

By the said notice the Executive Engineer (Civil)/Building Department, Borough-III of the Kolkata Municipal Corporation has intimidated the owners and occupiers of the premises that the assistants and workmen of the Kolkata Municipal Corporation shall enter the premises on 8th September, 2022 for the purpose of demolishing the unauthorized structure at the second and the third

floor in compliance of the direction passed by the Municipal Magistrate, 2nd Court, Calcutta on 29th July, 2022 in Criminal Misc. Case No.2807 of 2016.

The premises in question was constructed by obtaining sanction plan from the Kolkata Municipal Corporation for constructing a G+1 storey building. The person responsible constructed two additional floors, that is, second and the third floor without obtaining any sanction plan from the Kolkata Municipal Corporation.

The petitioner purchased the flat in the second floor of the said premises upon payment of valuable consideration. The petitioner is aggrieved as the petitioner was not given a notice prior to passing the order of demolition. It has been submitted that the Municipal Magistrate does not have the power and authority to pass the order of demolition.

Learned advocate appearing on behalf of the petitioner submits that the issue in question as to whether the Municipal Magistrate has the power to pass the order of demolition is under challenge and pending consideration before the Special Bench of this Court.

It has, however, been categorically submitted that there is no plan sanctioned in respect of the second and third floor of the said premises.

The Kolkata Municipal Corporation Act, 1980 bars construction without a valid sanction plan.

In the present case, the person(s) responsible have constructed the second and third floors without obtaining the necessary sanction plan. FIR was

lodged before the concerned Police Station and the matter was thereafter taken up for consideration by the learned Municipal Magistrate. The person(s) responsible were duly represented before the learned Court. The Court after conducting a regular trial passed an order of demolition.

The men and agents of the Kolkata Municipal Corporation are duty bound to act in accordance with law and in compliance of any order passed by the learned Court.

This Court is of the opinion that there is no error on the part of the Kolkata Municipal Corporation in issuing notice dated 27th August, 2022 under Sections 544 and 546 of the Kolkata Municipal Corporation Act, 1980 for the purpose of compliance of the direction passed by the Municipal Magistrate.

In view of the above, there is no reason to interfere with the instant writ petition.

The writ petition fails and is hereby dismissed.

The petitioner will, however, be at liberty to sue the vendor/developer of the property for compensation/damages on account of the demolition of the flat that he has purchased upon payment of valuable consideration.

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

(AMRITA SINHA, J.)