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ORDER SHEET

WPO No.2784 of 2022
IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
ORIGINAL SIDE

BANASREE MUKHERJEE & ORS.
-Versus-
THE KOLKATA MUNICIPAL CORPORATION & ORS.

BEFORE:
The Hon'ble JUSTICE AMRITA SINHA
Date: 4th November, 2022.

Appearance:
Mr. Raghunath Chakraborty, Adv.
Mrs. Amrita De, Adv.
...for Petitioners.

Mr. Gopal Chandra Das, Adv.
Mr. Subhrangsu Panda, Adv.
...for KMC.

The Court:- The petitioners are aggrieved by the notice issued under Section 401 of the Kolkata Municipal Corporation Act, 1980 by the Assistant Engineer (Civil), Building Department, Kolkata Municipal Corporation directing the petitioners to stop the construction work.

The petitioners submit that they were making construction in accordance with the plan sanctioned by the Kolkata Municipal Corporation. According to the petitioners, construction is at the plinth level.

The petitioners submit that as the construction work was being made in accordance with plan sanctioned, the authority ought not to have issued the said notice under Section 401 of the Act.

The petitioners pray for a direction upon the Kolkata Municipal Corporation to permit them to resume the work of construction.

Learned advocate representing the Kolkata Municipal Corporation submits that on receipt of a complaint the department inspected the premises being No.13, Sabarna Para Road, Ward No.126 of Borough-XVI, Kolkata-700 008 on 18th August, 2021 and found that construction work was going on in deviation of the sanctioned plan. The mandatory side upon open spaces have been infringed. The Department accordingly issued stop work notice and affixed the same on the wall and intimated the Haridevpur Police Station on 18th August, 2021.

The petitioners have annexed documents to show that plan was sanctioned in favour of them in June, 2021. The said plan is valid till 3rd June, 2026.

Apart from the fact that the Corporation issued notice under Section 401 of the Kolkata Municipal Corporation Act, the authority did not take any further steps to conclude the proceeding to deal with such unauthorized construction. It is incumbent upon the authority to take step to conclude the proceeding initiated and not sit tight over the matter only by issuing the stop work notice.

The petitioners assert that construction has been made only upto the plinth level.

Accordingly, the men and agents of the Kolkata Municipal Corporation are directed to cause fresh spot inspection upon notice to the petitioners to ascertain as to whether there is any requirement of continuing with the notice issued under Section 401 of the Act within a period of three weeks from the date of communication of this order. Inspection report shall be forwarded to the petitioners.

If the Corporation is of the opinion that the unauthorized construction is still subsisting, then necessary steps shall be taken by the Corporation to deal with such unauthorized construction in accordance with law after giving reasonable opportunity of hearing to the petitioners at the earliest but positively within a period of eight weeks from the date of communication of this order.

If the Corporation is of the opinion that construction work may be permitted to resume after removing the alleged unauthorized construction, if any, then the same shall also be intimated to the petitioners.

Demolition sketch plan of the subject premises and report filed by the Kolkata Municipal Corporation are retained with the records.

Writ petition stands disposed of.

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

(AMRITA SINHA, J.)

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