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ORDER SHEET

WPO No.2815 of 2022

**IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction**

ORIGINAL SIDE

MD. MOSTAFA HALDER

VS

THE KOLKATA MUNICIPAL CORPORATON & ORS.

BEFORE:

The Hon'ble JUSTICE AMRITA SINHA

Date: 4th November, 2022.

Appearance:

Mr. Golam Mohammad, Adv.
Mr. S.M. Burhanuddin, Adv.
..for the Petitioner.

Mr. Gopal Chandra Das, Adv.
Mr. Rudranil De, Adv.
..for KMC.

Mrs. Sipra Majumder, Adv.
Mrs. Debarati Sen (Bose), Adv.
..for State.

Mr. Ayan Banerjee, Adv.
Mr. Suman Banerjee, Adv.
..for Respondent Nos. 8 to 10.

The Court:-The matter relates to unauthorized construction carried on at the premises No. U-105A, Karbala Road, P.O.-Bartala, P.S.-Raja Bagan, Mouza-Garden Reach, R.S. Dag No.160. R.S. Khatian No.57, Touzi No.334, Sheet No.82 (Old) and 79(New), Kolkata-700 018, Ward No.139 of Kolkata Municipal Corporation (Garden Reach Unit).

In response to the complaint lodged by the petitioner, the Kolkata Municipal Corporation issued stop work notice under Section 401 of the Kolkata

Municipal Corporation Act, 1980 and notice under Section 400(1) of the Kolkata Municipal Corporation Act, 1980 to demolish the unauthorized portion.

Notice under Section 400(1) of the Kolkata Municipal Corporation Act, 1980 dated 16th November, 2021 mentions that the person responsible constructed the building in deviation from the sanctioned plan by constructing one additional floor.

The petitioners allege that despite notice issued under Sections 401 and 400(1) of the Kolkata Municipal Corporation Act, 1980, the private respondents are continuing with the construction work.

Learned advocate representing the private respondents denies the contentions of the petitioners. It has been submitted that the construction has been made in accordance with the plan sanctioned by the Corporation.

Learned advocate representing the Kolkata Municipal Corporation is not aware as to whether the proceeding initiated by the Corporation has been concluded or not.

As it appears from the notice dated 16th November, 2021 that the Corporation has already taken steps under Section 400(1) of the Kolkata Municipal Corporation Act, 1980 and directed the person responsible to demolish the unauthorized construction, accordingly, it is incumbent for the Corporation to ensure that the unauthorized portion is duly demolished by the person responsible for making such construction. If the person responsible fails and/or neglects to demolish the unauthorized construction, the Corporation

ought to take steps to demolish the same and realize the cost of demolition from the person responsible.

In view of the above, the instant writ petition stands disposed of by directing the respondent no.5 to take steps to deal with the unauthorized construction strictly in accordance with law after giving reasonable opportunity of hearing to all the necessary parties.

The Corporation shall ensure that the unauthorized construction, if any, is demolished positively within a period of twelve weeks from the date of communication of this order.

The writ petition stands disposed of.

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

Report filed by the Officer-in-Charge, Rajabagan Police Station in Court today is also taken on record.

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

(AMRITA SINHA, J.)