

ORDER SHEET
WPO/2850/2022
IA NO: GA/1/2022
IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
ORIGINAL SIDE

Biswajit Goswami.
Versus
Kolkata Municipal Corporation & Ors.

BEFORE:
The Hon'ble JUSTICE AMRITA SINHA
Date : 3rd November, 2022.

Mr. Tapas Dutta with Mr. Mritunjoy Halder, Advs.
... for petitioner.

Mr. Swapan Kr. Debnath with Mr. Gopal Chandra Das
& Mr. Debangshu Mondal, Advs.
... for KMC.

Mr. Debjit Mukherjee with Ms. Susmita Chatterjee, Advs.
... for State.

Mr. Arindam Banerjee with Mr. Sidhartha Sharma
& Md. Danish Taslim, Advs.
... for respondent no.5.

The petitioner is working for gain in the office of 'D&I Taxcon Services Pvt. Ltd.', Nicco House, 2nd Floor, Kolkata. He lodged a complaint before the Kolkata Municipal Corporation alleging illegal construction being made by the respondent no.5.

In response to the said complaint, a stop work notice was issued by the Kolkata Municipal Corporation but the same was later withdrawn.

The petitioner is aggrieved by the same and submits that the stop work notice could not have been withdrawn without giving an opportunity of hearing to the petitioner.

The petitioner prays for restoration of the stop working notice issued under Section 401 of the Kolkata Municipal Corporation Act, 1980 along with other prayers.

The Kolkata Municipal Corporation has filed a report before this Court signed by the Sub-Assistant Engineer (Civil/Building), Assistant Engineer (Civil/Building) and the Executive Engineer (Civil Building), Boroughs IV and V dated 15th October, 2022 which mentions that on receiving a telephonic complaint, the men and agents of the Building Department, Kolkata Municipal Corporation inspected the site and found a partition brick wall at the first floor (inside the building). The labourers failed to produce the document in support of the said construction. The department served the notice under Section 401 of the KMC Act.

The said premises was again inspected, wherefrom it was found that the party demolished the brick wall and was carrying on the renovation work. The party responsible for making construction, submitted the Structural Stability Certificate from the Class-I empanelled Engineer of the Kolkata Municipal Corporation. Relying on the same, the stop-work notice was withdrawn.

The petitioner submits that previously there were no brick walls and eighty per cent of the area was open and the rest was separated by plywood structures in the form of cubicles.

Learned Advocate representing the person responsible for making construction denies the contention of the petitioner. It has been submitted that previously brick walls were there for partition, but presently the brick walls have been removed and partition has been made by AAC (Autoclaved Aerated Concrete) blocks which are lighter than the conventional bricks and reduce the load of the existing building. In view of using the aforesaid blocks, the building has become safer and stable from the structural point of view. It has further been submitted that no permission or sanction is required from the Kolkata Municipal Corporation for reorientation of the internal partition walls.

Let the said report of the Kolkata Municipal Corporation and the report of the Hare Street Police Station be taken on record.

The private respondent also raised issue with regard to the locus standi of the petitioner to move the present writ petition.

It appears from the documents annexed to the writ petition and upon hearing the submissions made on behalf of the parties that a Title Suit filed by the employer of the petitioner being T.S. No.469/2020 challenging unauthorised construction is pending consideration before the learned City Civil Court, 12th Bench, Kolkata.

The submissions made by the petitioner are categorically disputed by the learned Advocate representing the private respondent at whose

instance construction is being carried out. The men and agents of the Kolkata Municipal Corporation claim to have inspected the property and have come to a conclusion that the construction complained of is not an unauthorised one and accordingly withdrew the stop work notice.

The men and agents of the Kolkata Municipal Corporation are directed to make regular inspections to ascertain as to whether the construction work, as alleged by the petitioner, is carried out in accordance with the rules.

No further relief can be granted to the petitioner in the instant writ petition.

The writ petition along with the connected application is disposed of.

Since the writ petition has been disposed of without calling for any affidavits, the allegations made therein are deemed not to have been admitted by the private respondent.

Urgent certified photocopy of this order, if applied for, be supplied to the parties expeditiously on compliance of usual legal formalities.

(AMRITA SINHA, J.)