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ORDER SHEET

WPO No. 3076 of 2022
IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
ORIGINAL SIDE

CHANDAN PAUL
-VS-
STATE OF WES BENGAL & ORS.

BEFORE:
The Hon'ble JUSTICE AMRITA SINHA
Date: 28th November, 2022.

Appearance:
Mr. Somnath Gangopadhyay, Adv.
... for the petitioner.

Mr. Gurudas Mitra, Adv.
Mr. Jayanta Kumar Dhar, Adv.
... for KMC.

The Court:- The matter relates to the premises No.86/1C, Gopi Mohan Dutt Lane, Ward No.7, Borough-I, Kolkata-700 003 of the Kolkata Municipal Corporation.

The primary grievance of the petitioner is that the Corporation without issuing any prior notice effected demolition of a portion of the structure standing at the aforesaid premises.

The petitioner has averred in the writ petition that the property is more than 100 years old and has become substantially damaged with passage of time and due to lack of proper maintenance.

The petitioner claims to have approached the Municipal authorities seeking permission to repair the property, but the respondent authorities neither accepted the application of the petitioner for repairing nor accorded necessary permission for carrying out the repairing work.

The petitioner has further averred that finding no other alternative and considering the dilapidated and risky condition of the building, the petitioner started repairing work of the structure. Soon thereafter a stop work notice was issued on 6th August, 2019.

In the course of the repairing work, some portions of the existing structure fell down as the same was severally damaged and the petitioner had no other option but to raise one floor for the purpose of accommodating his family members.

The petitioner relies upon the copy of the Inspection Book mentioning that there is partly two and partly three storied structure at the said premises and accordingly the portion of the structure which already exists ought not to be demolished by the Corporation.

Learned advocate representing the Kolkata Municipal Corporation has produced a report before this Court signed by the Executive Engineer, Building Department on 28th November, 2022 mentioning that recent departmental inspection revealed that unauthorized construction of three storied RCC framed structure building has been made without taking permission from the Corporation.

Despite stop work notice issued in August, 2019, unauthorized construction proceeded. Intimation was given to Shyampukur Police Station on 6th August, 2019. The demolition work has started today and will continue till completion as per approval of the higher authority under Section 400(8) of the Kolkata Municipal Corporation Act, 1980.

Upon hearing the parties and upon perusal of the averment made in the writ petition, documents annexed to the writ petition and the report furnished by the Executive Engineer, Building Department that the Corporation invoked the provision of Section 400(8) of the Kolkata Municipal Corporation Act, 1980 to deal with the unauthorized construction made by the petitioner it appears that there was no requirement of issuing any prior notice to the person responsible for making construction unauthorizedly.

Section 400(8) of the KMC Act, 1980 mentions that notwithstanding anything contained in the chapter under reference, if the Mayor-in-Council is of the opinion that immediate action is called for in relation to a building or a work being carried on in contravention of the provisions of the Act, it may, for reasons to be recorded in writing, cause such building or work to be demolished forthwith.

The demolition work in the instant case has been done by invoking the aforesaid provision. It has been submitted that the same is being done upon obtaining approval of the higher authority.

The petitioner has practically admitted in the writ petition that the construction has been made without proper permission.

In view of the above, no relief can be granted to the petitioner in the instant writ petition. The writ petition fails and is, hereby, dismissed.

Instruction given by the Executive Engineer, Building Department, Borough-I, Kolkata Municipal Corporation be retained with the records.

Affidavit of service filed in Court today be 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.)

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