

WPO No.3086 of 2022
IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
ORIGINAL SIDE

MD. ZAFAR
-VS-
THE KOLKATA MUNICIPAL CORPORATION & ORS.

BEFORE:
The Hon'ble JUSTICE AMRITA SINHA
Date: 12th December, 2022.

Appearance:
Mr. Avirup Chatterjee, Adv.
...for Petitioner.

Mr. Subhrangsu Panda, Adv.
Ms. Ina Bhattacharya, Adv.
...for KMC.

Ms. Nilofer Siddique Alam, Adv.
..for Respondent No.6.

Mr. Abdul Zahid, Adv.
Mr. S. Deb Roy, Adv.
..for Respondent No.7.

The Court:-The matter relates to the premises no.4A, Ahiripukur, Second Lane, Kolkata-700019, Ward No.69, Borough-VIII under the jurisdiction of the Kolkata Municipal Corporation.

The petitioner alleges illegal and unauthorized construction at the said premises. The petitioner complains that the objection filed before the Corporation has not been disposed of till date.

Learned advocate representing the private respondents submits that the private respondent purchased the property from the erstwhile owner in whose favour the plan was sanctioned.

Learned advocate representing the Kolkata Municipal Corporation has filed a report before this Court signed by the Assistant Engineer (Civil), Executive Engineer (Civil)/Building Department, Borough-VIII, Kolkata Municipal Corporation mentioning that on receiving the complaint of the

petitioner, the Department inspected the premises and it was found that there exists a five storied existing building fully occupied as a residential premise. Local enquiry revealed that the construction was completed few years ago.

Records available with the Corporation reveal that the building plan was sanctioned in the year 2004 for construction of two storied residential building. Construction that is presently existing is in deviation of the plan sanctioned and additional floors constructed without any sanctioned plan.

The Department has issued notice under Section 401 of the Kolkata Municipal Corporation Act, 1980 with intimation to Karaya Police Station. Departmental action will be taken as per Section 400 of the Kolkata Municipal Corporation Act, 1980.

It appears from the submission made on behalf of the private respondents that the petitioner being aware of the fact that the sanction was granted for construction of two storied residential building, purchased the same when there was already four floors constructed thereat.

No person is entitled to enjoy any portion of the property constructed in deviation or without a proper sanctioned plan. The private respondents are enjoying the property constructed not in accordance with law. Any construction made illegally is liable to be demolished to maintain the sanctity of law.

As the department has already come to a prima facie finding that construction has been made illegally and in an unauthorized manner, accordingly, the respondent no.5 being the Executive Engineer (Civil)/Building Department, Br.-VIII is directed to take necessary steps for demolition of the unauthorized construction in accordance with law, after giving a reasonable

opportunity of hearing to all the necessary parties. A formal order shall be passed and communicated to the parties.

Steps shall be taken in the matter positively within a period of twelve weeks from the date of communication of this order.

Officer-in-Charge of the Karaya Police Station is directed to render all necessary assistance to the men and agents of the Kolkata Municipal Corporation at the time of demolition, if sought for.

The writ petition stands disposed of.

Instruction given by the engineers of the Kolkata Municipal Corporation is 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.)