

ODSL-3

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
ORIGINAL SIDE

WPO/3169/2022

SIKHA DESHMUKH
VS
STATE OF WEST BENGAL AND OTHERS

BEFORE:

The Hon'ble JUSTICE AMRITA SINHA

Date : 12th December, 2022

Appearance :
Mr. A. K. Bhattacharya, Adv.
Mr. Somnath Gangopadhyay, Adv.
...for the petitioner

Mr. Gopal Chandra Das, Adv.
Mr. D. Chakraborty, Adv.
...for the K.M.C.

Mrs. Sipra Majumder, Adv.
Ms. D. Sen (Bose), Adv.
...for the State

The Court: The matter relates to the premises no-18C, Haralal Mitra Street, Kolkata-700003, Ward No.-7, Borough-1 of the Kolkata Municipal Corporation.

The petitioner filed the present writ petition on 5th December, 2022 with prayer to show cause the Corporation as to why notice under Section 400(1) of the Kolkata Municipal Corporation Act, 1980 should not be served forthwith upon the petitioner.

The petitioner also prayed for an order restraining the respondents from taking any coercive action pursuant to the notice dated 25th November, 2022 issued under Section 401 of the 1980 Act.

Learned Advocate representing the petitioner submits that on 9th December, 2022, the men and agents of the Kolkata Municipal Corporation started demolition of the alleged unauthorised construction without any prior notice.

It has been submitted that the prayer of the petitioner for regularization of the construction ought to be taken up for consideration first pursuant to the several circulars issued by the Corporation.

The learned Advocate representing the petitioner has failed to show any document in respect of the construction made.

The learned Advocate representing the Kolkata Municipal Corporation is yet to receive instruction in the matter.

It appears from the documents annexed to the writ petition and upon hearing the submissions made on behalf of the parties that the petitioner does not have a sanction for raising construction. The petitioner awaits order for regularization of the construction made.

According to the provisions of law, construction can be made only after obtaining sanction/permission from the Corporation and not prior thereto.

The petitioner without obtaining any permission/sanction started construction and after the notice under Section 401 has been issued, he falls back upon the submission that prayer for regularization will be made before the authority. Such stand of the petitioner cannot be supported in law.

The petitioner acted contrary to the provisions of law by raising construction without a proper sanction plan. It is for the Corporation to take

steps strictly in accordance with law, to deal with any unauthorized construction raised by the builder.

In view of the above, no relief can be granted to the petitioner in the instant writ petition.

The writ petition is hereby dismissed.

The report filed by the Shyampukur Police Station is taken on record.

The Affidavit of service filed 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.)

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