

OD-8

ORDER SHEET

WPO No. 3251 of 2022
IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
ORIGINAL SIDE

BINOD KUMAR SHAW
Versus
STATE OF WEST BENGAL & ORS.

BEFORE:
The Hon'ble JUSTICE AMRITA SINHA
Date: 13th December, 2022.

Appearance:
Mr. A. Kr. Bhattacharya, Adv.
Mr. A. Gupta, Adv.
Mr. S. Gangopadhyay, Adv.

..for Petitioner.

Mr. S. Panda, Adv.
Mr. D. Chakraborty, Adv.
...for KMC.

The Court:- The matter relates to the premises no. B/9A/H/9, Marhatta Ditch Lane, Ward No.7, Borough-I, P.S.- Shyampukur, Kolkata-700003.

Stop work notice under Section 401 of the Kolkata Municipal Corporation Act, 1980 was served upon the petitioner on 25th November, 2022 directing the person responsible to immediately stop all construction works including addition and alteration.

The petitioner submits that after issuance of the notice under Section 401, the Corporation did not take steps to conclude the proceeding. It has been submitted that yesterday, i.e. 12th December, 2022, the men and

agents of the Corporation visited the premises and demolished a portion of the disputed construction without any prior notice to the petitioner.

Learned Advocate appearing on behalf of the Corporation submits that departmental inspection revealed that a single storied RCC frame structure along with RCC stair and casting of RCC columns over one storey was constructed. On demand, the person responsible could not produce any document in support of the construction work. The area of unauthorised construction is 34 sq.m.

Notice under Section 401 of the Act was issued on 25th November, 2022 and intimation was sent to Shyampukur Police Station. Departmental re-inspection revealed that the person responsible resumed construction work defying the stop-work notice. Further FIR was lodged on 2nd December, 2022. The person responsible continued with the unauthorised construction defying all actions taken by the Corporation.

The department prepared the proposal under Section 400 of the KMC Act, 1980 along with Demolition Sketch and Infringement Statement. The construction infringes several rules under KMC Building Rules, 2009. It was observed that if the unauthorised construction is allowed to stand, the same may collapse at any moment leading to accidents resulting in loss of human life and property and will also create several hazards like fire and environmental hazards.

Considering the gravity of the situation and public safety in general, the department recommended demolition of the unauthorised construction forthwith under Section 400(8) of the KMC Act. The proposal was placed

before the meeting of the Mayor-in-Council of the Corporation and the same has been approved.

Pursuant to the approval, the personnel of the Corporation visited the premises yesterday and conducted part-demolition of the unauthorised construction with the help of the police force.

Upon perusal of the instruction provided by the Corporation it appears that decision to demolish the unauthorized construction forthwith without prior notice was taken in the meeting of the Mayor-in-Council by invoking the provision of Section 400(8) of the KMC Act. The same has been conducted keeping in mind public safety.

In view of the above, the Court is not inclined to exercise jurisdiction in this matter. The writ petition fails and hereby dismissed.

The instruction given by the Corporation is retained with the records.

Affidavit of service filed in Court today 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.)

nm/kb.