

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
ORIGINAL SIDE

APOT/232/2022
with
WPO/3169/2022
IA NO:GA/1/2022
SIKHA DESHMUKH
VS
STATE OF WEST BENGAL & ORS.

BEFORE:

The Hon'ble JUSTICE ARIJIT BANERJEE
The Hon'ble JUSTICE APURBA SINHA RAY
Date : 15TH DECEMBER, 2022.

Appearance:
Mr. Somnath Gangopadhyay, Advocate
Mr. Amit Gupta, Advocate
...for Appellant

Mr Gopal Ch. Das, Advocate
Mr. Dwijadas Chakraborty, Advocate
... for KMC

Mrs.Sipra Majumder, Advocate
Mr.Debarati, Advocate
...for State

THE COURT: This appeal is directed against a judgement and order dated December 12, 2022, whereby the appellant's writ petition being WPO 3169 of 2022 was dismissed.

The matter relates to premises No. 18C, Haralal Mitra Street, Ward No.7, Borough-1, Kolkata-700 003. It appears that a notice under Section 401 of the Kolkata Municipal Corporation Act, 1980 was issued by the authority in view of the fact that the appellant was making unauthorized construction. The appellant was called upon to stop such unauthorized construction.

The appellant approached the learned Single Judge challenging the notice issued under Section 401 of the Kolkata Municipal Corporation Act and also with a prayer that KMC be directed to issue notice under Section 400(1) of the Kolkata Municipal Corporation Act. It was submitted before the learned Judge that the appellant's prayer for regularisation had to be considered first by the KMC authority.

The learned Judge noted that the appellant could not produce any sanctioned plan. The learned Judge observed that according to the provisions of law, construction could be made only after obtaining sanction/permission from the Corporation. The learned Judge further observed as follows:

“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.”

Being aggrieved, the writ petitioner is before us by way of this appeal.

When this matter was moved yesterday, we had granted interim relief to the appellant and had called upon the KMC to produce the relevant resolution or decision pursuant to which the demolition activity has been taken up. Today, learned advocate for KMC has produced the resolution of the Mayor-in-Council adopted on December 3, 2022, which reads as follows:

“Resolved in MIC dt-

Considering the facts and circumstances as stated above in the departmental report and upon due consideration of other relevant issues, it is resolved that since the person responsible continued with the unauthorized construction as indicated in the precis of the Agenda Item as identified by the concerned department. Since such unauthorized construction is unsafe and may lead to accident resulting in loss of human life and property, appropriate action towards demolition of such unauthorized construction be taken forthwith under Section 400(8) of the KMC Act, 1980 with the help of police force.”

Hence, we find that the demolition activity has been undertaken by the Corporation authorities pursuant to a valid decision arrived at by the competent authority. Anybody, who makes unauthorized construction without obtaining prior sanction of the concerned authority, deserves no sympathy. It amounts to taking law into one’s own hand. Rule of law cannot countenance such action of a citizen.

We see no infirmity in the order under appeal.

The appeal and the connected application are accordingly dismissed.

However, we clarify that the Corporation authorities will demolish only such portion of the building in question which is unauthorized without adversely affecting the appellant's portion which is authorized, if any.

[ARIJIT BANERJEE, J]

[APURBA SINHA RAY, J.]

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