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Ct No 2023
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AGM

**In the High Court At Calcutta
Constitutional Writ Jurisdiction
Appellate Side**

**WPA 2443 of 2023
With
CAN 1 of 2023
With
CAN 2 of 2023**

**Dhiman Bhattacharya & Ors
Vs
The Kolkata Municipal Corporation & Ors**

Mr. Asif Hussain,
Ms. Laboni Pan,

... For the Petitioners.

Mr. Gopal Chandra Das,
Ms. Susmita Chatterjee,

... For the K.M.C.

Mr. Malay Krishna De,
Mr. Biswajit Dutta,

... for the State.

Ms. Jeenia Rudra

... for the applicant.

The petitioners complain of illegal and unauthorized construction over thika land at B/45/1/H/4, Manasatala Lane, Police Station – Watgunge, Kolkata 700 023, Ward No. 77, Borough No. IX under jurisdiction of Kolkata Municipal Corporation.

The petitioners complain that despite repeated complaints lodged before the Corporation, no steps have been taken against such unauthorized construction.

An application for addition of party and a separate application praying for stay of demolition proceeding has been filed by one Md. Musaib claiming that he is the

lessee of the said land and he obtained lease of the same from the heirs of the deceased respondent no. 9, who was the original owner of the property.

It appears from the documents annexed to the application for addition of party and the averments made therein that the Corporation has already issued notice under Sections 544 and 546 of the Kolkata Municipal Corporation Act fixing 22nd February, 2023, i.e. today as the date for initiating demolition proceeding of the unauthorized structure.

The applicant claims that the demolition proceeding was initiated without issuing any notice to the applicant and without affording any opportunity of hearing. The applicant was not aware of any demolition proceeding initiated against the structure at the subject premises.

Learned advocate representing the applicant further submits that the private respondent has expired.

It appears from the said notice under Sections 544 and 546 of the Kolkata Municipal Corporation Act that the order of demolition was passed by the Executive Engineer (Civil)/Building/Borough No. IX on 7th November, 2022 under Section 400(1) of the Kolkata Municipal Corporation Act 1980.

An order under Section 400(1) is appealable before the appellate forum. The writ Court is not the competent forum to adjudicate the legality of the order of demolition.

Learned advocate appearing for the Kolkata Municipal Corporation produces a bunch of documents wherefrom it appears that notice was given to the person

responsible for making construction. Hearing was conducted and the person responsible for making construction was present at the time of hearing. The order of demolition mentions that unauthorized construction at the roof level of the ground floor was made without obtaining any sanction plan.

The order of demolition is valid till date. As such, the men and the agents of the Corporation are directed to proceed with the demolition order in accordance with law, as per schedule.

The application seeking addition and stay of the demolition proceeding is considered and rejected.

The writ petition stands disposed of.

Report filed by the O.C., Watgunge P.S be retained with the records.

The applications being CAN 1 of 2023 and CAN 2 of 2023 are dismissed.

Urgent certified photocopy of this order, if applied for, be supplied to the parties or their advocates on record expeditiously on compliance of usual legal formalities.

(Amrita Sinha, J.)