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18.04.2023
d.p.

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

W.P.A 5143 of 2023

**Sheikh Babar
-versus
The Kolkata Municipal Corporation & Ors.**

**Mr. Animesh Paul.
...For the Petitioner.**

**Mr. Sk. Toshim Ali,
Ms. Saba Parveen.
...For the Respondent No.5.**

**Mr. Subrangsu Panda,
Ms. Ina Bhattacharyya.
...For KMC.**

**Mr. Subhojit Seal,
Ms. Dibyanjona Das.
...For the Intervenor.**

Affidavit-of-service filed in Court today is taken on record.

The petitioner complains of illegal and unauthorized construction.

The further case of the petitioner is that the building permit has been obtained by practicing misrepresentation and fraud.

Objection filed by the petitioner before the respondent authority is pending consideration.

Learned advocate representing one Mr. Shahid Raza submits that he is presently the developer of the

subject premises i.e. 13 C, Meher Naskar Lane, Ward No.64, Borough-VII. Leave has been sought to intervene in the present writ petition.

Learned advocate appearing for the Kolkata Municipal Corporation submits that on detection of unauthorized construction, the matter was placed before the Special Officer (Building).

A proceeding was initiated under Sections 400(1) and 416 of the Kolkata Municipal Corporation Act, 1980. A final order was passed by the Special Officer (Building) on 27th February, 2023.

Copy of the order dated 27.02.2023 has been placed before this Court. It appears therefrom that the matter was heard on 3rd February, 2023. The Special Officer (Building) has recorded in the order that the complainant did not appear at the time of hearing.

On a perusal of the said order, it further appears that neither the petitioner/complainant nor the person responsible for making construction was heard by the Special Officer (Building).

Till an opportunity of hearing is given to all the necessary parties, the order passed under Section 400(1) of the Kolkata Municipal Corporation Act, 1980 will suffer from the vice of arbitrariness and violation of the principles of natural justice.

The order passed by the Special Officer (Building) on 27th February, 2023 in Demolition Case No. D-86/VII/22-23 is accordingly, set aside.

The Municipal Commissioner or his delegate is directed to consider the representation filed by the petitioner on 7th February, 2023 in accordance with law after giving a reasonable opportunity of hearing to all the necessary parties and pass a reasoned order and communicate the same to the parties.

All efforts shall be taken to conclude the proceeding at the earliest, but positively within a period of twelve weeks from the date of communication of a copy of this order.

Learned advocate appearing for the petitioner is directed to forward a copy of the representation dated 7th February, 2023 to the aforesaid respondent at the time of communicating the order of the Court.

The writ petition stands disposed of.

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

(Amrita Sinha, J.)