

Item No.23

In the High Court at Calcutta
Constitutional Writ Jurisdiction
Appellate Side

08.12.2023
Ct-24

WPA 12793 of 2023
Shamima Begum

v.

The Chief Secretary of Home, Govt. of WB & Ors.

Mr. Shataroop Purkayastha
... for the petitioner.

Mr. Daanish Haque
Md. Zohaib Rauf
Md. Siraj Munir
... for the respondent no. 11.

Mr. Barin Banerjee
Ms. Dipanwita Ganguly
... for KMC.

The petitioner complains of illegal and unauthorized construction at the behest of the private respondents.

Allegation is that construction has been made without leaving the mandatory side open spaces and additional floors have been constructed without obtaining sanction.

Complaint lodged against such unauthorized construction is pending consideration.

Learned advocate representing the respondent no. 11 admits that there has been certain deviations. The additional construction that was made has already been demolished by the Corporation upon invoking the provision of Section 400 (8) of the Kolkata Municipal Corporation Act, 1980.

It has been submitted that an application for regularization of the deviations is pending consideration before the Corporation.

The engineer of the Corporation has forwarded a report to this Court wherefrom it appears that the department inspected the premises and found that erection of three storied RCC structures were made encroaching the mandatory open spaces and some RCC columns have been constructed in deviation from the sanctioned plan.

Notice under Section 401 of the Kolkata Municipal Corporation Act, 1980 was issued on February 16, 2023 with intimation to the Karaya Police Station. The department is proceeding under Section 400 of the Act.

The instruction forwarded by the engineer reveals that unauthorized construction was detected way back in February 2023 but the proceeding to deal with such unauthorized construction has not been initiated till date. The delay in initiating proceeding to deal with unauthorized construction provides a leeway to the person responsible to continue with the unauthorized construction, later on which becomes difficult to demolish. The department ought to act with diligence and should have taken prompt necessary steps to deal with such unauthorized construction the moment the same comes to their knowledge.

As it appears that the file is being processed under Section 400 of the Act, the Executive Engineer(C)/Building Department, Borough-VII is directed to take immediate steps to conclude the proceeding at the earliest but positively within a period of twelve weeks from the date of communication of this order.

The petitioner further submits that the plan was sanctioned in the name of a dead person.

The Executive Engineer shall verify whether the said allegation is true or not. If the allegation is found to

be true, then necessary consequential steps shall be taken in accordance with law.

The writ petition stands disposed of.

Instruction of the engineer filed in Court be kept with the record.

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

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(Amrita Sinha, J.)