

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

WPA 14704 of 2023

**Sarita Shaw
-versus
The State of West Bengal & Ors.**

**Ms. Swheta Maity
Mr. Samyobrata Basu
... For the petitioner.**

**Ms. Susmita Chatterjee
... For the K.M.C.**

**Mr. Debjit Mukherjee
... For the State.**

**Mr. Debabrata Ray
... For the Respondent Nos. 10 to 12.**

The petitioner complains of illegal and unauthorised construction at 95, Durga Charan Mitra Street, Ward No. 18, Borough-II under the jurisdiction of Kolkata Municipal Corporation.

Private respondents deny the allegation of the petitioner. It has been submitted that an old existing structure was there and mere repairing work has been made. No new construction has been made.

On a perusal of the report forwarded by the Executive Engineer, Building Department, Borough-II signed on 16th October, 2023, it appears that on receipt of a telephonic complaint, the Department inspected and detected unauthorised construction. A stop work

notice under Section 401 of the KMC Act, 1980 was served and intimation given to the Burtolla Police Station. The Department processed the file by issuing a notice under Section 400 (1) of the Act.

A Criminal Misc Case being no. 05 of 2022 was filed and is pending before the learned Senior Municipal Magistrate. First Information Report under Section 401A was lodged and report submitted before the Senior Municipal Magistrate on 30th August, 2022.

The Magistrate directed the D.G (Building) to submit an enquiry report which has duly been submitted on 8th September, 2023.

The unauthorised construction has been done in the ground and the first floor and the total area of unauthorised construction is approximately 72.48 sq. meter.

After hearing both the parties and upon perusal of the materials on record, it appears that unauthorised construction was detected long back but till date no steps have been taken to deal with the same.

On account of the failure on the part of the Corporation to conclude the proceeding under Section 400 of the Act, the private respondents have been emboldened to continue with the unauthorised construction. The pace in which the proceeding is continuing before the Corporation, implies that the authority is not interested to take action against the unauthorised construction that is going on. Inaction of the Corporation is providing enough leverage to unscrupulous builders to continue unauthorized

construction with impunity. The same is required to be stopped immediately.

The Commissioner, Kolkata Municipal Corporation is directed to take immediate steps to ensure that the unauthorised construction is dealt with appropriately at the earliest but positively within a period of twelve weeks from the date of communication of this order.

The Commissioner is also directed to take necessary action against the concerned engineer(s) who failed to take prompt steps on detection of the unauthorized construction.

The report filed by the police is retained with the records.

Leave is granted to the advocate-on-record of the private respondents to file vakalatnama in the department in course of the day.

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.)