

92. 27.07.2023
bd. Ct.15

W.P.A. 20130 of 2018
IA NO. CAN 1 of 2018 (Old No. CAN 9875/2018)

Sri Bidyut Kumar Sarkar & Anr.

-vs-

The Kolkata Municipal Corporation & Ors.

Mr. B.B.Sarkar

Ms. Iti Dutta

Ms.Priti Jain

Mr. Protit Sarkar ... for the petitioners.

Mr. Achintya Kumar Banerjee

Mr. Subhrangshu Panda ... for the KMC.

Mr. Moniruz Zaman

Mr. Amit Halder ... for the State

The writ petition has been instituted, inter alia, praying for demolition of unauthorised construction made by the respondent nos. 8 and 9 at premises No. 47, Talpukur Baghajatin Road, under the jurisdiction of KMC.

Today the writ petition is heard in presence of the learned advocates representing the petitioners, KMC and the State respondents. However, no one is representing the respondent nos. 8 and 9 in spite of service of notice upon the learned advocate representing those respondents.

Affidavit of service filed on behalf of petitioners is taken on record.

Having heard the learned advocates representing the petitioners and KMC this Court has decided to consider the matter on merit today since hearing of this matter was adjourned on 12th

June, 2023 in view of absence of the respondent nos. 8 and 9 and subsequently notice has been given upon the learned advocate representing the respondents for their representation before this Court on the next date.

Learned advocate representing the petitioners has submitted that pursuant to the previous order passed by a coordinate Bench on 5th October, 2018 a report in the form of an affidavit has been affirmed on 15th November, 2018 on behalf of KMC wherein it has been stated that the constructions made by the respondent nos. 8 and 9 is without sanctioned plan and as such the same is unauthorised.

Petitioners have prayed for a direction upon the concerned authority of KMC to demolish the construction at the site in question based on the report filed on behalf of Corporation.

Mr. Banerjee, learned advocate representing KMC has submitted that it is true that a report has been filed by the Executive Engineer (Civil) Building Department, Borough- XII, KMC, which is part of the affidavit filed on behalf of KMC wherefrom it appears that without obtaining sanctioned plan construction has been made at the site in question but statute prescribes initiation of appropriate proceedings prior to taking steps for demolishing the structure which has been alleged as unauthorised by the petitioners.

Having heard the learned advocates representing the parties and on perusal of the

documents available on record it appears that the Executive Engineer (Civil) Building Department, Borough- XII, of KMC on inspection found that the construction made by the respondent nos. 8 and 9 is without sanctioned plan. Statements have also been made in the affidavit affirmed on 15th November, 2018 disclosing the nature of construction based on such report of the Executive Engineer dated 12th November, 2018.

However, this Court finds merit in the submission made on behalf of KMC that prior to demolishing the construction made by respondent nos. 8 and 9 appropriate proceeding as prescribed under the statute on compliance of section 400(1) of Kolkata Municipal Corporation Act, 1980 needs to be conducted.

Accordingly, the concerned authority of the KMC is directed to initiate a proceeding under section 400(1) of the Kolkata Municipal Corporation Act, 1980 within a period of two weeks from the date of communication of this order and take the same to a logical conclusion within twelve weeks thereafter after granting opportunity of hearing to the petitioners and the respondent nos. 8 and 9. The decision to be taken by the concerned authority of KMC shall be communicated to the parties within one week thereafter.

However, it is made clear if the concerned authority of KMC decides that the construction has been made by the respondent nos. 8 and 9 without obtaining sanctioned plan necessary steps shall be

taken immediately after passing order in terms of the aforesaid direction for demolition of the said construction.

With the aforesaid direction the writ petition stands disposed of. Application, if any pending, also stands disposed of.

There shall be no order as to costs.

Urgent photostat certified copy of the order, if applied for, be given to the parties, upon usual undertakings.

(Saugata Bhattacharyya, J.)