

95 15.03.2023

gd

WPA/21326/2022
SK. AZAD AND ANR.
VS
KOLKATA MUNICIPAL CORPORATION AND ORS.

Mr. Debjit Mukherjee,
Mr. Avirup Mondal,
Mr. Shahnaz Parveen
..for the Petitioners.

Mr. Pinaki Dhole,
Ms. Ananya Neogi
..for the State.

Mr. Tapan Coomar Dey
..for KMC.

The petitioners pray for a direction upon the Kolkata Municipal Corporation for consideration of the As Made Plan submitted before the Corporation.

It appears from the order passed by the Special Officer (Building), Kolkata Municipal Corporation on 11th January, 2023 that the petitioners are responsible for constructing the 3rd and 4th floor of the subject premises without obtaining any sanction from the Corporation.

The area of unauthorised construction is 615 sq. meter approximately. The order of demolition passed under Section 400(1) of the KMC Act, 1980 is under challenge before the appellate forum.

The petitioners submit that as the As Made Plan was submitted prior to passing of the order of demolition, accordingly, a direction may be passed for consideration of the said plan.

I am unable to accept the submission of the petitioners.

According to the Act, construction can be made only after obtaining sanction and not prior thereto. The petitioners have constructed two additional floors and encroached the mandatory side open spaces. The same is contrary to the municipal law.

In view of the above, the prayer of the petitioners seeking direction for consideration of the As Made Plan stands rejected.

It is made clear that this Court has not entered into the merits of the order passed under Section 400(1) of the KMC Act, 1980 and the appellate forum will be at liberty to decide the appeal on merits and on the basis of the documents available on records.

The writ petition stands dismissed.

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

(Amrita Sinha, J.)

e