

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

Present :- Hon'ble Justice Amrita Sinha

WPA 21821 of 2023

Sk. Md. Sharfuddin
Vs.
Kolkata Municipal Corporation & Ors.

For the writ petitioner	:-	Mr. Srijib Chakraborty, Adv. Mr. Sumitava Chakraborty, Adv. Mr. Debottam Das, Adv. Mr. Dibyanjona Das, Adv.
For the KMC	:-	Mr. Subhrangsu Panda, Adv. Ms. Ina Bhattacharyya, Adv.
Heard on	:-	12.09.2023
Judgment on	:-	12.09.2023

Amrita Sinha, J.:-

The writ petition relates to certain unauthorized construction over premises no. 100, Canning Street, Ward No. 042, Borough-V of the Kolkata Municipal Corporation.

The construction in question appears to have started in the year 2020 or prior thereto. Notice under Section 401 of the Kolkata Municipal Corporation Act, 1980 was issued on 14th October, 2020 with intimation to the police station when the department inspected construction being made from the 4th floor to the 7th floor and a C.I. shed structure on the roof of the 7th floor.

Despite the stop work notice, the person responsible continued with the unauthorized construction.

FIR under Section 401A of the Act was lodged on 15th October, 2010 and proposal under Section 400 of the Act, along with demolition sketch and infringement statement was prepared for taking necessary action.

Receiving a complaint over the 'Talk-to-Mayor' programme about the unauthorized construction, the department inspected the site again and found that 4th to 7th floor and the C.I. shed over the 7th floor was constructed illegally. The building is fully occupied and used for commercial purpose.

A decision was taken by the Mayor-in-Council approved by the Mayor for invoking the provision of Section 400(8) of the Act. It was observed that the said construction, if allowed to stand, may collapse at any moment of time leading to accident resulting in loss of human life and property and will also create several hazards like fire hazards and environmental hazards etc.

The petitioner is aggrieved by the same.

It has been submitted that there is no immediate necessity for invoking the provision of Section 400(8) of the Act. The construction is in place from 2020 and the Corporation ought to afford reasonable opportunity of hearing to the petitioner prior to taking any steps for demolition of the alleged unauthorized construction.

Learned advocate appearing for the petitioner submits, upon instructions, that there is a plan for raising construction upto the G+4 floors.

According to the Corporation, the structure in question is extremely dangerous and may collapse any time causing accident. Prayer has been made to permit the Corporation to demolish the unauthorized construction.

After hearing the submissions made on behalf of both the parties and upon perusal of the materials on record, the Court is left wondering as to what the department was doing for the last three years despite unauthorized construction being detected.

Even though unauthorized construction was noticed way back in 2020, the officers of the Corporation failed to take any steps to deal with such unauthorized construction. The officers of the Corporation permitted the person responsible for making construction to complete the entire unauthorized construction and

thereafter, permitted creating third party interest and also permitted the said persons to use the said property as a commercial one.

Had the officers of the Corporation taken prompt steps at the very initial stage, then further legal complications in dealing with such unauthorized construction could have been avoided. The process initiated under Section 400 ought to have been proceeded with and should have been brought to a logical conclusion instead of abandoning it midway. It was highly illegal not to take follow-up action after the initial step was taken on detection of the unauthorized construction.

Due to lapse of three years several third party right may have been created over the subject property. Though it is true that none acquires any right over any construction made unauthorizedly, but passing any order of demolition without granting any opportunity of hearing to the said persons will be in violation of the principle of natural justice.

According to Section 400(8) of the Kolkata Municipal Corporation Act, notwithstanding anything contained in the Chapter, if the Mayor-in-Council is of the opinion that immediate action is called for in relation to a building or work being carried on in contravention of the provision of the act, it may, for reasons to be recorded in writing, cause such building or work to be demolished forthwith.

In the instant case, no work is being carried on at present. Construction of the unauthorized structure is over long back. Only on a phone call to the Mayor does not give rise to a cause of action calling for immediate action to be taken by the Corporation. Law has laid down the manner in which unauthorized constructions are to be dealt with. Had the Mayor not been made aware of the illegal construction, then the same would have stood there till the apprehended accident would occur. But by that time, nothing possibly could have been left to be done. Valuable life and property may be lost.

The petitioner has failed to produce any document and has also not made any averment in the writ petition whether the construction of the 5th, 6th, 7th and above floors were made after obtaining any sanction or not. Silence on the part of the petitioner to disclose that the construction of the entire G+7 storied structure along with C.I. shed was made upon obtaining sanctioned plan implies that the construction made from the 5th floor to the top are unauthorized.

It is always open for the Corporation to take necessary steps to deal with the unauthorized construction but certainly not without affording an opportunity of hearing to the person responsible for making construction as contemplated in law. The legal requirement of giving opportunity of hearing cannot be given a go-by as the same will infringe the right to life and property guaranteed under the Constitution. The immediacy with which action ought to have been taken, not been taken in proper time, the authority cannot resort to Section 400(8) after three years, that too, only upon a phone call to the Mayor. Time is the essence for invoking Section 400(8). The immediate threat diminishes with passage of time.

As the Corporation through the Mayor-in-Council has already opined in writing that the structure in question is extremely dangerous and may collapse at any moment of time leading to accident resulting in loss of human life and property, accordingly, the Commissioner or his delegate is directed to take immediate steps for dealing with such unauthorized construction after giving a reasonable opportunity of hearing to all the necessary parties.

The structure being fully occupied, it may be difficult and time taking for the Corporation to serve individual notices to all the occupants thereof. The notice of hearing may be served upon the owner and the person responsible for making construction and copy of the notice of hearing shall be affixed at various conspicuous places in and around the subject structure so that all concerned gets aware of the date of hearing and subsequently do not come forward with the plea that individual notice of hearing was not served. The above procedure is

required to be adopted only to reduce the notice period and at the same time give wide publicity to the date of hearing.

In the event the person responsible for making construction fails to produce any document in support of the construction made, then necessary steps shall be taken to demolish the same in accordance with law.

It is needless to mention that according to the Act, construction can be made only upon obtaining a prior sanctioned plan and not without the same. Any construction made in deviation of or without a sanctioned plan remains unauthorized, liable to be demolished.

A decision shall be taken in the matter at the earliest, but positively within a period of eight weeks from the date of communication of this order.

The order impugned dated 28th August, 2023 is set aside.

It appears that the impugned order was triggered by a phone call to the Mayor. Had the concerned officers taken prompt action then such illegality could have been dealt with at the very initial stage. The Court expects that the Mayor will take appropriate steps against the erring officers who failed or deliberately did not take action against the illegal construction despite having knowledge of the same. If the concerned officers are not dealt with appropriately, the menace of illegal construction cannot be arrested and it is only a matter of time within which the city will have more unauthorized constructions than the authorized ones.

The Act provides dedicated departments to look into such issues. It is the duty of the borough offices to take note of the same and follow up the issue till it is resolved. The officers in the borough offices are required to act diligently, promptly and honestly and they should not bow down to the money and muscle power of the unscrupulous builders who raise construction in complete disregard to the legal provisions. Inaction on the part of the concerned officers always emboldens the builders to carry on such illegal constructions with impunity. It is

neither expected nor humanly possible for the Mayor to keep track of all the constructions being made all over the city but at the same time the head of the institution is required to keep track whether all the organs of the institution are properly functioning or not. The loop holes in the system should be plugged immediately.

Learned advocate representing the Corporation is directed to communicate this order to the Mayor, Commissioner and the Director General, Building so that positive steps in the right direction may be taken to save the city from the hands of the land sharks, promoters and developers who raise construction without following the basic engineering norms and the relevant legal provisions.

The writ petition stands disposed of.

Urgent certified photocopy of this judgment, if applied for, be supplied to the parties or their advocates on record expeditiously on compliance of usual legal formalities.

(Amrita Sinha, J.)