

Sl. No.46
04.12.2023

Court No.24
BM

In The High Court At Calcutta
Constitutional Writ Jurisdiction
Appellate Side

WPA 26964 of 2023

Sk. Moidul Islam
Versus
The Kolkata Municipal Corporation & Ors.

Mr. Probal Mukherjee, Sr. Adv.
Mr. Debanik Banerjee
Mr. Anirban Roychowdhury
Mr. Steven S Biswas

... for the Petitioner

Mr. Gopal Chandra Das
Mr. Atish Ghosh

... for KMC

The petitioner is aggrieved by the action taken by the Kolkata Municipal Corporation in invoking provision under Section 400(8) of the Kolkata Municipal Corporation Act, 1980, in demolishing the unauthorized construction made at premises no. T-348/3, Panchpara Road, Ward No.138, Borough-XV, under jurisdiction of the Kolkata Municipal Corporation.

It appears from record that the Corporation sanctioned plan for construction of G+3 storied building. The plan expired on 17th November, 2022.

Departmental inspection revealed that construction of six storied structure was going on in deviation from the sanctioned plan. The Corporation issued stop work notice under Section 401 of the Act in March, 2023 with intimation to the Rajabagan Police Station. The persons responsible defied the stop work notice and continued

with the construction work. A reminder letter was sent to the police on 17th April, 2023.

The department prepared demolition sketch plan and infringement statement and proposed to take steps under Section 400 of the Act.

Considering the gravity of the situation and the safety of the public in general, the department recommended demolition by invoking Section 400(8) of the Act on 28th July, 2023. The proposal for invoking Section 400 (8) was adopted in the meeting of the Mayor-in-Council and thereafter the proposal has been approved by the Mayor in August, 2023.

It has been submitted by the petitioner that no opportunity of hearing was given prior to invoking the aforesaid provision. The Corporation has caused substantial demolition of the structure without any notice.

It has been submitted that in the absence of proper inspection and subjective satisfaction that the unauthorized construction may collapse, the respondent authorities ought not to have invoked the emergency provision. It has been submitted that there is no emergency whatsoever for demolishing the subject structure.

Learned advocate representing the Corporation submits that plan was sanctioned for construction of G+3 storied building. The persons responsible constructed

additional floors without any sanction and even after expiry of the sanctioned plan, the persons responsible continued with the construction work defying the stop work notice. The Corporation was compelled to invoke Section 400(8) of the Act, primarily because if the structure is allowed to stand, the same may collapse resulting in loss of human life and property.

The respondents pray for dismissal of the writ petition.

I have heard the submissions made on behalf of both the parties and perused the materials before the Court.

Admittedly, additional floors have been constructed without any sanction, that too, after expiry of the sanctioned plan. The Corporation, being an expert body has opined that if the structure is allowed to stand, the same may collapse at any moment. The Municipal Commissioner and the Deputy Chief Engineer (Building) were of the unanimous opinion that Section 400(8) is required to be invoked to prevent any untoward incident or accident causing loss of human life and property. The said decision has been approved by the Mayor.

According to the Kolkata Municipal Corporation Act, construction can be made only after obtaining a valid sanctioned plan and not prior thereto.

In the instant case massive unauthorized construction has been raised without valid sanctioned plan.

The Court not being an expert body is not in a position to decide as to whether there was any emergency reason for invoking Section 400(8) of the Act. The engineers of the Corporation thought it fit to invoke the said provision which does not require prior opportunity of hearing to be granted to the parties. The Court does not find any illegality in the same. Accordingly, no relief can be granted to the petitioner in this case.

The writ petition fails and is hereby dismissed.

Supplementary affidavit filed by the petitioner is retained with the record.

Urgent photostat certified copy of this order, if applied for, be given to the parties on completion of usual formalities.

(Amrita Sinha, J.)