

Item No.2

In the High Court At Calcutta
Constitutional Writ Jurisdiction
Appellate Side

13.12.2023
Ct-24

WPA 27365 of 2023
Mr. Dipankar Sarkar

v.

The State of West Bengal & Ors.

Mr. Kushal Chatterjee
Mr. Oishik Chatterjee
... for the petitioner.

Mr. Joydeep Das
... for the respondent no. 8.

Mr. Alak Kumar Ghosh
Mr. Piyali Sengupta
... for KMC.

Mr. Jyoti Prakash Chatterjee
Mr. S. Alam
... for the State.

The grievance of the petitioner is that the construction in question made at the behest of the petitioner has been partially demolished by the Corporation without serving any notice and without granting any prior opportunity of hearing to the petitioner.

Reference has been made to the order passed by this Bench on September 18, 2023 in WPA 14830 of 2023 (Subhrajyoti Mallick v. The Kolkata Municipal Corporation & Ors.) wherein the Court noted that a construction of G+3 storied building was being made without obtaining any sanction at all. The Court directed the Corporation to take necessary steps for concluding the proceeding to deal with the unauthorized construction.

The petitioner contends that the construction has been made over thika property and there is a provision to save the structure in question.

Learned advocate representing the Corporation submits that provision of Section 400(8) of the Kolkata Municipal Corporation Act, 1980 was invoked as it was found that the G+3 storied structure has come up without any sanction at all.

Section 400(8) is an emergent provision which has been invoked by the Corporation to deal with the unauthorized construction. The said provision does not require a prior opportunity of hearing to be given to the person responsible for making construction. It has been submitted that the construction is required to be demolished immediately because of safety issues.

The decision to invoke Section 400(8) of the Act was recommended by the Mayor in Council approved by the Mayor.

Learned advocate representing the petitioner fairly admits in Court that no sanction has been obtained for raising such construction.

The submission of the petitioner that the property being a thika property can be protected under the Thika law is not accepted by the Court. Prior to making any construction irrespective of the fact whether it is over thika land or not, permission from the Corporation ought to have been obtained. The same has not been done. There is no sanction for constructing the G+3 storied building.

In view of the above, the Court is not inclined to exercise jurisdiction in the matter.

The writ petition fails and is hereby dismissed.

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

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(Amrita Sinha, J.)