

OD – 14

ORDER SHEET
IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
ORIGINAL SIDE

WPO/212/2021

PRANAB RANJAN DAS
VS
THE KOLKATA MUNICIPAL CORPORATION AND OTHERS

BEFORE:

The Hon'ble JUSTICE RAI CHATTOPADHYAY

Date : 5th September, 2023.

Appearance:
Mr. Jayanta Narayan Chatterjee, Adv.
Mr. Debashis Banerjee, Adv.
Mr. Supreem Naskar, Adv.
Mr. Rakesh Jana, Adv.
... for the petitioner.

The Court : Petitioner is represented. Though in spite of notice having been served upon all the respondents (affidavit-of-service is filed in Court), no one is representing the respondents including the Kolkata Municipal Corporation. The specific grievance of the petitioner/co-owner of the concerned property, in this writ petition is that the building consisting four stories have been erected at premises no. 38/18A, Naktala Road (mailing address: 37/59, Arabinda Nagar), Kolkata-700 047, Ward No. 100 which is within the jurisdiction of Kolkata Municipal Corporation, is an illegal and unauthorised construction.

The petitioner has prayed for the relief in this writ petition, inter alia, that the respondent Kolkata Municipal Corporation be directed to start

proceedings under Section 400, subsection (1) of the Kolkata Municipal Corporation Act, for demolition of the unauthorized four storied construction as mentioned above.

The petitioner is specifically aggrieved with the inaction of the respondent Municipality in demolishing the unauthorized and illegal constructions over the premises as above even inspite of there being an order, to that effect, by this Court, in an earlier writ petition being No. 148 of 2018 on 12th June, 2018. During course of hearing, an order, passed by the Special Officer (Building) dated 12.11.2018 has been submitted in the Court which reads as follows:-

"Considered the submissions of the persons responsible present at the hearing. Construction of a 3 storied building without obtaining sanctioned plan from the KMC authority is highly objectionable and cannot be accepted. But considering the dearth of accommodation of the family members of the persons responsible the following orders are made

- 1) Top floor of the building should be demolished by the persons responsible within 30 days of receipt of this order, failing which the KMC authority is at liberty to demolish the same at the cost and at the risk of the persons responsible.*
- 2) The remaining two floors (ground floor and first floor) can be treated as "minor unauthorised erection or work" as defined under Rule 3(1)(C) of the KMC (Regularization of Building) Regulation, 2015 and these unauthorised constructions are regularised and retained under rule 4 of the rules 2015 of KMC Act, 1980 subject to the following preconditions:*
 - a) That the persons responsible must furnish a certificate from a KMC empanelled structural engineer certifying that the stability and the foundation of the impugned constructions are safe*

and sound and the materials used as well as workmanship are as per the latest edition of NBC of India within 30 days of receipt of this order.

- b) That they must pay the fees for retention of the regularised construction within 30 days of the calculation sheet to be prepared by the respective department of the KMC.*
- c) That they must furnish an affidavit declaring on oath that they will not make any construction whatsoever in the impugned premises without prior sanction from the KMC authority.*

Non compliance of any of the conditions stated above will invite demolition of the unauthorised constructions by the KMC authority at the cost and at the risk of the person responsible."

Mr. Banerjee, appearing on behalf of the petitioner has specifically referred to the said order of the Special Officer (Building) to state that the same is absolutely in contravention with the statutory provisions and only allowed the illegal construction to be maintained, which is an impugned action on behalf of the respondent Municipality, liable to be set aside. Mr. Banerjee has traveled through various provisions of law to state that the portions of the building, that is, the entire two stories thereof, which have been allowed to be retained by the Special Officer (Building) vide his said order as mentioned above, is de-hors law, insofar as the statutory mandate is for allowing minor deviations to the sanctioned plan to be retained, if it is considered fit and proper by the appropriate authority. By referring to the said order of the Special Officer (Building) Mr. Banerjee is pointed out that the portion of the illegal construction as retained vide the said order as mentioned above, can never be addressed as any minor deviation to any

sanctioned plan. As a matter of fact he says that there was no plan at all for the said constructions, sanctioned previous to the construction, by the Municipal Authority. On the grounds as above, he has prayed that the present writ petition be allowed and the respondent Municipal Commission be directed to demolish the entire unauthorized construction in terms of the statutory provisions. As the order of the Special Officer (Building) dated 12.11.2018, has been issued, during pendency of this writ petition, Mr. Banerjee submits that the same may be directed to be set aside.

No affidavit-in-opposition have been filed in this case by the Municipal Commission excepting submitting the report of the Special Officer (Building) dated 12.11.2018 as above.

Considering the entire materials placed before this Court, it appears that a four storied building in premises no. 38/18A, Naktala Road (mailing address: 37/59, Arabinda Nagar), Kolkata-700 047, Ward No. 100 which is within the jurisdiction of Kolkata Municipal Corporation, has been constructed without obtaining a plan, previously sanctioned by the Municipal Authority. This being the mandatory provision of law, any construction without the plan thereof being sanctioned previously by the authority, is illegal. Considering the same, this Court has earlier in Writ Petition No. 148 of 2018 vide order dated 12th June, 2018 has directed the Municipal Authority for initiation of a proceeding under Section 400, subsection (1) of the said Act, for demolition of the entire unauthorized and illegal construction. However, without complying with the same and in deviation of the statutory provisions, the Special Officer (Building) has passed this order dated 12.11.2018 granting permission of retention of a

major portion of the building, after directing a minor portion thereof to be demolished.

The statute accepts only certain minor physical deviations from the previously sanctioned building plan to be retained in a particular case, if the authorities think so fit and proper. Unless the same, the entire constructed building area divided in floors more than one, cannot be directed to be within the purview of the expression “minor deviation” as envisaged in the said law. Moreso, this Court does not fail to notice that there was no previous sanction of building plan before construction of the entire four stories of the building. It is surprising as to how a four storied building could be brought up without notice of the respective authorities and beyond any previous plan for sanction of the same.

Be that as it may, the order of the Special Officer (Building) dated 12.11.2018 cannot sustain in view of the fact that the same is de-hors what has been provided in the statute and also violating the very scope and purpose for which the Kolkata Municipal Corporation Act has been brought into force. The said order is liable to be set aside and the writ petition is thus eligible to be allowed.

Writ Petition No. 212 of 2021 is allowed.

Order of the Special Officer (Building) dated 12.11.2018, is set aside.

Let the respondent Corporation initiate the proceedings for demolition of the entire four storied building being constructed without a valid plan previously sanctioned by the Corporation and also the order of Special Officer (Building) dated 12.11.2018 having being set aside by this Court. The Corporation shall initiate the proceedings as above in accordance with law,

within a period of two weeks from the date of communication of this order upon the Corporation.

With the directions as above, the writ petition is disposed of.

(RAI CHATTOPADHYAY, J.)

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