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ORDER SHEET
WPO No.824 of 2023
IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
ORIGINAL SIDE

MD. PARVEZ ALAM
VS.
THE KOLKATA MUNICIPAL CORPORATION & ORS.

BEFORE:
The Hon'ble JUSTICE AMRITA SINHA
Date: 11th April, 2023.

Appearance:
Mr. Raghunath Chakraborty, Adv.
Ms. Amrita De, Adv.
Ms. Tanusree Das, Adv.
... for the Petitioner.

Mr. Dwijadas Chakraborty, Adv.
... for K.M.C.

Mr. Manoj Malhotra, Adv.
Mr. Sabyasachi Mondal, Adv.
...for the State.

The Court:- The matter relates to the unauthorized construction at premises no.16C, Canal Street, Ward No.55, Borough-VI, Police Station - Entally under the jurisdiction of the Kolkata Municipal Corporation.

The petitioner was held responsible for constructing one additional floor that is the fifth floor over the sanctioned G+IV storied residential building and also held guilty of encroachment of mandatory side open spaces. The department issued stop work notice under Section 401 of the Kolkata Municipal Corporation Act, 1980 on 18.02.2023 with intimation to the Entally Police Station. Further departmental inspection revealed that the persons responsible resumed the construction work defying the stop work notice.

First Information Report under Section 401A of the Act was lodged on 21.02.2023. Despite FIR lodged, the person responsible continued with the unauthorized construction defying all action taken by the Corporation.

Proposal under Section 400 of the Kolkata Municipal Corporation Act along with demolition sketch and the infringement statement was prepared and placed in the meeting of the Mayor-in-Council for approval. The Mayor-in-Council in the meeting held on 01.03.2023 resolved that immediate action be taken for demolition of the unauthorized construction under Section 400(8) of the Kolkata Municipal Corporation with the help of the police force.

The areas of the unauthorized construction is approximately 284.92 sq. meter.

The petitioner is aggrieved by the same.

It has been submitted that it was improper for the department to invoke the emergency provision under Section 400(8) of the Act but ought to have resorted to the provision under Section 400(1) of the Act.

Reliance has been placed on the judgment delivered by this Court in the matter of ***Sunil Chandra Dey Vs. The State of West Bengal & Ors.*** reported in ***2007(2) CLJ (Cal.) 674.***

Learned advocate representing the Kolkata Municipal Corporation submits that as the petitioner continued with the unauthorized construction in spite of all efforts to stop the same, accordingly, the Corporation was left with no other alternative but to invoke the emergency provision to prevent accident and loss of valuable life and property.

Learned advocate representing the State respondent hands over the instruction forwarded by the Officer-in-Charge, Entally Police Station signed on 10.04.2023 wherein it has been mentioned that as per request of the department,

police assistance was provided to the demolition team for demolishing the unauthorized construction at the subject premises. Part demolition work was carried out on 20.03.2023.

From the submissions made on behalf of the parties and on perusal of the materials on record, it appears that the facts of this case are similar to the facts of **WPO No.634 of 2023 (M/s. Kzar Properties Pvt. Ltd. & Anr. Vs. The Kolkata Municipal Corporation & Ors.)**. The said matter was decided by this bench and judgment delivered on 23.03.2023.

The argument of the petitioner in the present case is exactly the same as in M/s. Kzar Properties (supra).

The point to be decided in the instant case being similar to that of M/s. Kzar Properties (supra), accordingly, the present writ petition is disposed of on similar lines.

The matter is remanded back to the Corporation to re-verify the documents and necessary facts and figures to arrive at a fresh decision as to whether there is any requirement of invoking provision of Section 400(8) of the Act.

Only if there is grave emergency and immediate demolition is the only remedy keeping in mind the safety issue, then the authority may move ahead with the said demolition; but if the immediate security threat is not there, then an opportunity of hearing shall be given to the petitioner for defending the unauthorised construction.

Steps 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. Till a decision is taken in the matter, the impugned order of demolition shall be kept in abeyance. Further construction at the subject structure in any manner

whatsoever may aggravate the risk factor, and as such, the petitioner is required to abstain from making any construction at the disputed site. The petitioner is, accordingly, restrained from making any construction in the subject structure till a final decision is taken as indicated herein above. The Officer in Charge, Entally Police Station is directed to keep strict vigil over the property to ensure that no construction in any manner whatsoever is carried out at the subject structure and no third party right is created till a final decision is taken by KMC.

It is made clear that the court is not at all dissuading the Mayor in Council in passing order under Section 400(8) of the Act, but is only drawing the attention of the authority that the said provision may be invoked only after subjective and objective satisfaction is recorded about the immediate threat to safety. The emergent provision may be resorted to only in emergent situations and not in ordinary course of events.

Writ petition stands disposed of.

Affidavit of service filed in Court today is taken on record.

No costs.

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

(AMRITA SINHA, J.)