

WPO No.905 of 2023
IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
ORIGINAL SIDE

ASHOKE SEAL
-Versus-
THE KOLKATA MUNICIPAL CORPORATION & ORS.

BEFORE:
The Hon'ble JUSTICE AMRITA SINHA
Date: 24th April, 2023.

Appearance:
Mr. Raghunath Chakraborty, Adv.
...for the Petitioner.

Mr. Gopal Chandra Das, Adv.
Mr. Subhrangsu Panda, Adv.
...for KMC.
Mrs. Sipra Majumder, Adv.
Mrs. Debarati Sen (Bose), Adv.
...for the State.

The Court:- This is the second writ petition filed by the petitioner after a notice under Section 401 of the Kolkata Municipal Corporation Act, 1980 has been issued on 08.02.2023 directing the petitioner to stop all construction works.

In April, 2023, the petitioner approached this Court by filing writ petition being WPO No.860 of 2023 on the apprehension that the Corporation may take recourse to the provision of Section 400(8) of the Kolkata Municipal Corporation Act, 1980.

The said writ petition stood dismissed on 13.04.2023 on the submission made on behalf of the learned advocate representing the Kolkata Municipal Corporation that no steps have been taken by the Corporation against such unauthorized construction till that date.

The present writ petition has been affirmed on 19.04.2023 with a prayer directing the Corporation to initiate proceeding under Section 400(1) of the Act.

It appears that the petitioner is in tearing hurry to complete the construction work despite being aware of the fact that the same was being made in an unauthorized manner. Once the Corporation has detected unauthorized construction, it is for the authority to take necessary steps in accordance with law to deal with such unauthorized construction.

It is not permissible for a builder raising unauthorized construction to dictate terms upon the authorities regarding the provision under which he ought to be prosecuted. It is for the authority to take a decision as to the manner in which the unauthorized construction is to be dealt with.

It appears that as on date steps have not been taken to deal with such unauthorized construction except for issuance of the stop work notice. The Corporation shall take steps in accordance with law.

Writ petition stands dismissed.

Report filed by the Officer-in-Charge, Manicktala Police Station signed on 24.04.2023 be retained with the records.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties upon compliance of all legal formalities.

(AMRITA SINHA, J.)