

APOT /138/2023
I A. GA/1/2023
WPO/934/2023
IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
Original Side

PRATAP DEBNATH.
-Versus-
THE KOLKATA MUNICIPAL
CORPORATION AND ORS.

Appearance:
Mr. Raghunath Chakraborty, Advocate,
Ms. Amrita Dey, *Advocate*
...for the Appellant
Mr. Srijan Nayek, Advocate
Mr. D. Chakraborty, Advocate
for Kolkata Municipal Corporation.

BEFORE:
The Hon'ble JUSTICE ARIJIT BANERJEE
The Hon'ble JUSTICE APURBA SINHA RAY

Date: May 03, 2023.

THE COURT: A judgment and order dated April 26, 2023, whereby the appellant's writ petition being WPO No. 934 of 2023 was disposed of, is the subject matter of challenge in this appeal.

Challenging a notice under section 401(stop work) of the Kolkata Municipal Corporation Act, 1980, the appellant approached the learned single Judge. The appellant prayed that

proceeding under section 400(1) of the KMC Act, 1980 should be initiated after service of notice under section 401 of the Kolkata Municipal Corporation Act, 1980. In support of such submission, the appellant relied on the decision in the case of Sri Prahlad Singh Jaggi & Ors. Vs. Kolkata Municipal Corporation & Ors reported in (2017) 4 Cal LT 564 (HC).

The learned Judge disposed of the writ petition with the observation that “ in the present case, it appears that unauthorised construction has been detected. Concerned officer of the Kolkata Municipal Corporation shall take necessary steps in the matter in accordance with law.”

The writ petitioner has come up by way of this appeal with the apprehension that the order is not clear enough. It should be clarified that no immediate coercive action may be taken. Proceedings under Section 400(1) of 1980 Act should be initiated and taken to its logical conclusion. Only thereafter the Corporation can take any further step in the matter.

Mr. Nayek, learned Advocate appearing for the Corporation says that he has instruction that notice under section 400(1) of 1980 Act will be issued to the appellant.

In that view of the matter, there is no further reason for the appellant to apprehend anything untoward.

Needless to say, till the conclusion of the proceedings under section 400(1), in accordance with law, no coercive steps not contemplated by law can be taken by the Corporation against the appellant.

Both the appeal and the application are, accordingly, disposed of.

Since no affidavit is called for, the allegations made in the stay petition are deemed not to have been admitted by the respondents.

(ARIJIT BANERJEE, J.)

(APURBA SINHA RAY, J.)

dg/