

OD-5

ORDER SHEET
WPO No.1030 of 2023
IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
ORIGINAL SIDE

SUBRATA PAUL
VS.
THE KOLKATA MUNICIPAL CORPORATION & ORS.

BEFORE:
The Hon'ble JUSTICE AMRITA SINHA
Date:4th May, 2023.

Appearance:
Mr. P.S. Deb Barman, Adv.
Mr. Amit Gupta, Adv.
Mr. Anindya Bose, Adv.
...for the Petitioner.

Mr. Swapan Kr. Debnath, Adv.
Ms. Sabnam De, Adv.
...for KMC.

The Court:- The writ petition relates to certain construction at premises no. T 40A, Bonamali Sarkar Street, Ward No.9, Borough-I, Kolkata-700005 under the jurisdiction of the Kolkata Municipal Corporation.

The petitioner submits that the building in question is an old one and the petitioner was merely repairing the same. The Corporation illegally and arbitrarily issued Section 401 notice and upon receipt of the notice the petitioner immediately stopped construction work. An application for regularisation of the construction made was submitted before the Executive Engineer [Civil], Building Department, Borough-I on 27.03.2023. Petitioner alleges that despite receipt of the representation for regularisation, the respondent authority proceeded to demolish a portion of the construction made by the petitioner.

Learned advocate for the petitioner contends that prior to effecting demolition work no notice was issued to the petitioner. There was no reply from the end of the petitioner with regard to the prayer for regularisation either.

Learned advocate representing the Kolkata Municipal Corporation has received instruction from the Assistant Engineer [Civil] signed on 03.05.2023

wherein it has been mentioned that unauthorised construction was detected at the time of departmental inspection. It was found that construction of two storied RCC frame structure along with extended RCC columns over the first floor roof was going on. To prevent any further unauthorised construction notice under section 401 of the Kolkata Municipal Corporation Act, 1980 was issued upon the persons responsible for making construction on 13.03.2023 with intimation to the Shyampukur Police Station. A copy was thereafter placed before the higher authority for necessary action to process under section 400 of the Kolkata Municipal Corporation Act.

The authority of the Kolkata Municipal Corporation directed action to be taken under section 400[8] of the Act to demolish the unauthorised construction. The date of demolition was fixed on 03.05.2023. During execution of the demolition work on 03.05.2023 it was found that the person responsible continued with the construction of RCC slab at the second floor roof level defying all action taken under section 401 of the Kolkata Municipal Corporation Act.

Learned advocate for the petitioner submits that the authority ought not to have taken steps under section 400[8] of the Act because the same implies immediate action to be taken. In the present case stop work notice was issued in March, 2023 and the demolition was carried out on 03.05.2023.

The petitioner has admittedly not been able to produce any permission from the Corporation allowing construction of RCC structure.

In view of the above, no relief can be granted to the petitioner in the instant writ petition.

The writ petition stands dismissed.

It will be open for the petitioner to challenge the proceeding initiated by the Corporation under section 400[8] of the Act in an appropriate proceeding in accordance with law, if so advised.

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

(AMRITA SINHA, J.)

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