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ORDER SHEET
WPO No.942 of 2021
IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
ORIGINAL SIDE

RAMA ACHARYYA
VS.
THE KOLKATA MUNICIPAL CORPORATION & ORS.

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

Appearance:
Mr. Raghunath Chakraborty, Adv.
Md. Apzal Ansari, Adv.
Mr. M. Ahmed, Adv.
....for the Petitioner.

Mr. Alak Kr. Ghosh, Adv.
Mr. Tapan Coomar Dey, Adv.
Ms. Piyali Sengupta, Adv.
... for K.M.C.

Mr. Sourav Sen, Adv.
Ms. Sumitra Das, Adv.
..for Respondent Nos. 9 to 13.

The Court:-The petitioner complains of illegal and unauthorized construction at premises no. Z3-429, Jeliapara Road, Ward-141, Borough-XV, Nadial Police Station, Kolkata-700044.

The premises in question is suffering demolition proceedings. The initial order of demolition and the connected proceeding is under scrutiny before this Court in C.O.No.1089/2008. By an order dated 04.04.2008 this Court restrained the persons responsible from making unauthorized construction in the said property for a limited time period or until further order, whichever is earlier. The said restraint order has been extended from time to time and the same is subsisting till date.

The petitioner alleges that the persons responsible for making construction are continuing with the unauthorized construction and steps ought to be taken for demolition of such construction.

It appears that in response to the complaint lodged by the petitioner, proceedings under Section 400(1) of the Kolkata Municipal Corporation Act, 1980 has been initiated and Demolition Case No.12-D/Br.-XV/2020-2021 dated 12th March, 2021 is pending consideration.

A report has been filed by the Kolkata Municipal Corporation wherein a demolition sketch has been annexed.

Learned advocate representing the private respondents denies the allegations of the petitioner.

According to the engineers of the Kolkata Municipal Corporation, the extent of encroachment cannot be ascertained due to absence of the boundary wall and non demarcation of the property.

According to the provision of law, the Kolkata Municipal Corporation is not entitled to decide or adjudicate the issue of encroachment by private parties. The Kolkata Municipal Corporation is required to ascertain as to whether there has been any unauthorized construction or not. Accordingly, it will be open for the petitioner to highlight all the unauthorized constructions raised by the private respondents.

The concerned Executive Engineer of the Kolkata Municipal Corporation shall take into consideration the illegalities pointed out by the petitioner and take steps to deal with the same in accordance with law after giving a reasonable opportunity of hearing to all the necessary parties and pass a reasoned order in the matter.

It will also be open for the petitioner to draw the attention of the Court where the civil revision application is pending highlighting the violation of the direction passed in the interim order.

The demolition proceeding which is pending shall be concluded at the earliest, but positively within a period of twelve weeks from the date of communication of this order.

The writ petition stands disposed of.

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

(AMRITA SINHA, J.)