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ORDER SHEET

WPO No.1071 of 2023
IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
ORIGINAL SIDE

SUBRATA PAUL
-Versus-
THE KOLKATA MUNICIPAL CORPORATION & ORS.

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

Appearance:
Mr. Anindya Bose, Adv.
Mr. Amit Gupta, Adv.
...for the Petitioner.

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

The Court:-A portion of the premises no. T 40A, Bonamali Sarkar Street, Ward No.9, Borough-I, Kolkata-700005 of the Kolkata Municipal Corporation is facing an order of demolition on account of the construction made without sanction.

A stop work notice was issued on 13.03.2023 signed by the Sub-Assistant Engineer (Civil)/Building on 10.03.2023. On receiving the stop work notice, the petitioner applied for regularization of the construction made on 25.03.2023. Despite receipt of the application for regularization, the Kolkata Municipal Corporation proceeded to demolish the said unauthorized construction.

The petitioner rushed to this Court by filing the writ petition being WPO No.1030 of 2023. The said petition stood disposed of by the Court on 04.05.2023 on the submission made by the learned advocate representing the Kolkata Municipal Corporation that steps for demolition had been taken under Section 400(8) of the Kolkata Municipal Corporation Act, 1980. Part demolition has already been conducted on 03.05.2023.

During execution of the demolition work, it was found that the persons responsible continued with the construction of RCC slab in the second floor roof

level defying the stop work notice issued under Section 401 of the Act. As there is no provision for affording prior opportunity of hearing when action is taken under Section 400(8) of the Act, accordingly, no opportunity was given to the petitioner prior to effecting the work of demolition.

The writ petition was dismissed and the Court granted liberty to the petitioner to challenge the proceeding initiated by the Kolkata Municipal Corporation under Section 400(8) of the Act in an appropriate proceeding. The instant writ petition has been filed challenging the action taken by the Kolkata Municipal Corporation under Section 400(8) of the Act.

The petitioner submits that the stop work notice was issued in March, 2023 and the demolition work was conducted in May, 2023 and the Kolkata Municipal Corporation waited for more than a month to execute the order of demolition. The same cannot be said that immediate action was called for in relation to the building or the work being carried on. Prayer has been made for granting an opportunity of hearing to the petitioner prior to any further steps being taken for demolition of the remaining portion of the construction.

Learned advocate refers to the circular of the Kolkata Municipal Corporation being office Circular No.16 of 2021-2022 dated 02.03.2022 regarding deposition of the security deposit money before starting of hearing regarding unauthorized construction under Sections 400(1) and 416 of the Act.

Learned advocate appearing on behalf of the petitioner relies upon the judgment delivered by this Court on 23.03.2023 in WPO No.634 of 2023 in the matter of M/s. Kzar Properties Pvt. Ltd. & Anr. Vs. The Kolkata Municipal Corporation & Ors. where the Court was of the opinion that prior to depriving a party an opportunity of hearing and shutting away the forum for preferring appeal, necessary ground work is mandatorily required to be done. There should be a conclusive substantive opinion that if the offending structure is not brought down immediately, then accident may occur causing loss of valuable life and property. If

the imminent threat to life and property is absent, then recourse to Section 400(8) of the Act ought not to be availed of at the very first stage. Order of demolition can also be passed after giving the offender an opportunity of being heard.

In the instant case, it appears that the construction has admittedly been made without a valid sanctioned plan. The petitioner tries to impress the Court that the same is not a new construction but a mere repairing work.

The Kolkata Municipal Corporation has already effected part demolition on 03.05.2023. As on date there is nothing on record before this Court to suggest that further immediate demolition is required to be made.

In view of the above, the instant writ petition is disposed of by directing the Executive Engineer (Civil)/ Building Department, Borough-I of the Kolkata Municipal Corporation being the respondent No.4 herein to reconsider the matter afresh as to whether further demolition work is required to be effected immediately. If it appears that there is no immediate threat to the structure in question, then an opportunity of hearing be given to the petitioner and a decision be taken in the matter on urgent basis positively within a period of four weeks from the date of communication of this order. A reasoned order shall be passed and communicated to the petitioner.

The writ petition stands disposed of.

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

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.)