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ORDER SHEET
WPO No.1227 of 2023
IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
ORIGINAL SIDE

SANJIB KUMAR SHAW
VERSUS
THE KOLKATA MUNICIPAL CORPORATION & ORS.

BEFORE:
The Hon'ble JUSTICE AMRITA SINHA
Date:13th June, 2023.

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

Mr. Swapan Kr. Debnath, Adv.
Ms. Sabnam De, Adv.
... for K.M. C.

The Court:- Petitioner is aggrieved by the action on the part of the Kolkata Municipal Corporation in taking steps for demolition of the construction at B/36C/H/1, Nalin Sarkar Street, Ward No.11 under Borough-II of the Kolkata Municipal Corporation.

It appears that the petitioner has been found to have constructed unauthorisedly a four storied building constructed with several column, beam, slab and brickwork. The said construction was made without obtaining any sanctioned plan. A stop work notice was issued under Section 401 of the Kolkata Municipal Corporation Act, 1980 on 27.07.2022 with intimation to the Shyampukur Police Station. Round-the-clock police posting was made on 06.08.2022. Department prepared proposal under Section 400 of the KMC Act, 1980 along with demolition sketch and infringement statement and placed the same before the higher authority.

The Corporation on 06.06.2023 fixed the demolition programme for demolition of the unauthorised construction under Section 400[8] of the KMC Act, 1980.

Petitioner submits that there is no immediate requirement of invoking the provision of Section 400[8]. No opportunity of hearing was given to the petitioner prior to taking steps for demolition.

Learned advocate representing the Corporation submits that the petitioner sat tight over the matter and did not take any steps after issuance of the stop work notice in July, 2022. It has been submitted that the entire construction has been made without obtaining any sanctioned plan and, accordingly, proposal was placed before the higher authority for taking necessary steps.

According to provision of Section 400[8] of the Act, the Mayor-in-Council may take immediate action in relation to any building or a work being carried on in contravention of the provisions of the Act for the reasons to be recorded in writing and cause such building or work to be demolished forthwith.

In the present case, there is nothing on record to suggest that immediate action is required to be taken in the matter. Construction in question was admittedly made without obtaining any sanctioned plan. Accordingly, a stop work notice was issued way back on 27.07.2022.

Had the Mayor-in-council opined to take steps in the matter, then immediate action ought to have been taken. Nearly eleven months are over from the date of detection of the unauthorised construction. At such stage, it cannot be said that immediate action is called for. An opportunity of hearing ought to be given to the petitioner prior to taking

steps for demolition otherwise the act of the Corporation will suffer from the vice of not maintaining the principle of natural justice, equity and fair play.

In view of the above, the Commissioner of Kolkata Municipal Corporation or his delegate is directed to take necessary steps to deal with the unauthorised construction in accordance with law, at the earliest but positively within a period of sixteen weeks from the date of communication of this order.

Officer-in-Charge, Shyampukur Police Station is directed to keep strict vigil over the property to ensure that no construction in any manner whatsoever is carried out at the subject premises till a decision is taken by the Kolkata Municipal Corporation in this regard.

Instructions forwarded by the Executive Engineer, Building Department, Borough II, Kolkata Municipal Corporation signed on 12.06.2023 be retained with the records.

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 expeditiously on compliance of usual legal formalities.

(AMRITA SINHA, J.)