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ORDER SHEET
WPO No.1231 of 2023
IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
ORIGINAL SIDE

AVYAAN INITIATIVES AND ANR.
VERSUS
THE KOLKATA MUNICIPAL CORPORATION & ORS.

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

Appearance:
Mr. Anindya Lahiri, Adv.
Mr. Prajnadeepta Roy, Adv.
Mr. Samrat Dey Paul, Adv.
Ms. Sohini Kundu, Adv.
....for the Petitioners.

Mr. Gopal Chandra Das, Adv.
Mr. Dwijadas Chakraborty, Adv.
... for K.M.C.

Mr. Supratik Basu, Adv.
Ms. Sutapa Dutta, Adv.
Mr. Samata Chhari, Adv.
...for the Respondent No.8.

The Court:- Petitioners accept the responsibility of raising unauthorised construction of two additional floors and the cantilever and C.I. shed in premises no.3/1, Raj Krishna Chatterjee Road, Ward No. 67, Borough-VII under jurisdiction of Kolkata Municipal Corporation.

An order of demolition was passed by the Special Officer [Building], Kolkata Municipal Corporation.

Primary contention of the petitioners is that no opportunity of hearing was given to them prior to passing the order of demolition by the Special Officer [Building], Kolkata Municipal Corporation.

It has been submitted that on 16.01.2023 the matter was taken up for consideration by the Special Officer [Building], Kolkata Municipal Corporation and it was specifically recorded in the order dated 09.02.2023 that the next date of hearing would be communicated later.

Petitioners contend that the subsequent date of hearing was not communicated to them and, accordingly, it was not possible for them to place their case before the Special Officer [Building], Kolkata Municipal Corporation when the matter was taken up for consideration on 02.03.2023.

Special Officer [Building], Kolkata Municipal Corporation on 02.03.2023 passed an order for demolition of the unauthorized construction.

Being aggrieved by the same, the petitioners approached the statutory appellate forum being the Municipal Building Tribunal. The Tribunal in B. T. Appeal No.83 of 2023 took up for consideration the application for stay filed by the petitioners and passed order after hearing all the parties.

Learned Municipal Building Tribunal took into the consideration the note of the technical member wherein it has been specifically mentioned that the person responsible has constructed two additional floors beyond the sanctioned plan leaving no open spaces either in the front, rear or sides. Car parking space is also not provided as per sanctioned building plan. One staircase is constructed though there is a provision for construction of two staircases. Staircase, which has been constructed, is also far lesser in dimension. C.I. shed at the side open spaces of the western side and rear side has been constructed. Cantilever has been built up on the front and open side spaces on the eastern side from the first floor level. Quantum of unauthorized structure is of around 3200 sq. ft.

Learned Municipal Building Tribunal was of the opinion that the quantum of unauthorized construction cannot at all be taken as a minor one and is substantive in nature. The Tribunal also was of the opinion that the person responsible made the construction leaving absolute zero space on four sides of the building and the same may turn out an absolute mess in day to day life of all

the inhabitants of the building and the passerby on the road including the neighbours of the vicinity.

The appellate forum also recorded that the maintenance of the building during exigency cannot be taken up in view of spaces not being left on any of the sides. Not constructing the second staircase at the whim of the person responsible may create fire hazards in future.

It was also considered that the two additional floors would transmit the total load towards foundation. The unaccounted dead load for the two additional floors may imbalance the sanctioned structure comprising on the quantum of the 'factor to safety' of the bearing capacity of the foundation which was taken during sanction of the building plan and is neither desirable nor acceptable. Because of the additional imposing load that is punching sheer, change of bending moment shear force may affect size of different members, viz. compression member, tensile members, reinforcement size and its distribution for the total building.

The appellate authority was of the opinion that all Rules and Regulations of the Kolkata Municipal Corporation have been violated in making such unauthorized construction jeopardising the Civil Engineering aspect. There was an opportunity to defy the existence and sanctity of the Civil Engineering aspect and an attempt to show a thumb towards Rules and Regulations required for constructing a building in accordance with the provision of law.

It was clearly recorded that any order staying the demolition of such illegal construction will send out wrong message towards civil society and may encourage the wrong doers for doing such type of illegal construction.

Learned Municipal Building Tribunal was pleased to dismiss the application seeking stay of the order of demolition passed by the Special Officer [Building], Kolkata Municipal Corporation.

Learned advocate representing the petitioners submits that a copy of the report of the technical member was not served upon them. Petitioners were not given an opportunity to take an exception to the report filed by the technical member in support of the stand that the construction that has been made is a stable one and may be permitted to be retained by regularising the same.

Despite repeated opportunities granted to the learned advocate representing the petitioners, learned advocate failed to show or come up with any provision of law which permits retention/regularisation of constructions of such massive nature constructed without obtaining any prior sanctioned plan. Petitioners press to remand the matter back to the learned Municipal Building Tribunal for hearing the same afresh.

Upon hearing the submissions made on behalf of all the parties and upon perusal of the materials on record, it appears that the petitioners try their level best to hold on to all the constructions which have been made without obtaining any sanctioned plan from the Corporation. Construction in question has been made defying all norms of engineering and violates all provisions of the Municipal Building laws.

Not maintaining any side spaces, raising construction of two additional floors, cantilever, C.I. shed, constructing only one staircase instead of two are absolutely illegal and there is no chance for regularising the same.

Learned Municipal Building Tribunal has very rightly formed the opinion and concluded that stay of demolition of such unauthorised construction will send out wrong message to the society.

This Court is also of the opinion that no leniency ought to be shown to any such construction which has been made without obtaining prior sanction. Provision of law is very clear to the effect that construction is required to be made

only after obtaining sanction and not prior thereto. Constructing additional floors and other structures and thereafter approaching the Kolkata Municipal Corporation for regularising the same is absolutely contrary to law. Such attempts should be nipped in the bud and dealt with an iron hand.

The Kolkata Municipal Corporation is liable to take steps for demolition of such unauthorised construction at the earliest.

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

The writ petition fails and is hereby dismissed.

Copy of the order dated 18.05.2023 passed by the Municipal Building Tribunal, Kolkata Municipal Corporation in B.T. Appeal No.83 of 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.)