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ORDER SHEET
WPO No.1247 of 2023
IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
ORIGINAL SIDE

AXIS INTELLIGENCE & SURAKSHA PVT. LTD. & ANR.
VERSUS
THE KOLKATA MUNICIPAL CORPORATION & ORS.

BEFORE:
The Hon'ble JUSTICE AMRITA SINHA
Date:14th June, 2023.

Appearance:
Mr. Sumon Kr. Dutt , Adv.
Mr. Siddhartha Banerjee, Adv.
Mr. Prasanta Naskar, Adv.
Ms. Jyoti Rauth, Adv.
Mr. Sharjil Ahmed, Adv.
....for the Petitioners.

Mr. Fazlul Haque, Adv.
Mr. Gopal Chandra Das, Adv.
...for KMC.

The Court:- Petitioners are aggrieved by the steps taken by the Kolkata Municipal Corporation to demolish the unauthorized structure constructed at the instance of the petitioners by invoking provisions of Section 400(8) of the Kolkata Municipal Corporation Act, 1980.

It appears from records that part demolition took place in March, 2023. Thereafter, the Corporation has not taken any further steps to demolish the remaining portion which is still standing.

Petitioners have filed application seeking regularisation of the said unauthorised portion by filing representation before the Corporation on 21.03.2023. The said representation is pending consideration.

Admittedly, the Corporation prior to demolishing the alleged unauthorized portion did not grant any opportunity of hearing to the person responsible as the provision of Section 400(8) of the Kolkata Municipal Corporation Act, 1980 was invoked and there is no scope for granting any prior opportunity of hearing as per the said provision.

After partial demolition was carried out in March, 2023, the Corporation did not proceed to demolish the remaining structure and accordingly at this point of time there is no impediment on the part of the Corporation to consider the prayer of the petitioners for regularisation of the portions which are still standing. The immediate reason for invoking Section 400(8) of the Act no longer survives at such a belated stage.

In view of the above, the instant writ petition is disposed of by directing the respondent no.4 being the Executive Engineer (Civil), Building Department, Borough-VII of the Kolkata Municipal Corporation to consider the prayer of the petitioners seeking regularisation of the deviated portion in accordance with law, after giving a reasonable opportunity of hearing to all the necessary parties including the complainant, i.e. M/s. Mirador Commercial Pvt. Ltd. and pass a reasoned order and communicate the same to the parties immediately thereafter.

A decision shall be taken in the matter at the earliest, but positively within a period of twelve weeks from the date of communication of this order. A spot inspection shall be conducted to ascertain the extent and nature of the unauthorized/deviated construction upon prior notice to all the necessary parties.

It is made clear that this Court has not entered into the merits of the prayer of the petitioners seeking regularisation and all points are left open to be decided by the aforesaid respondent at the time of consideration of the representation of the petitioners.

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 expeditiously on compliance of usual legal formalities.

(AMRITA SINHA, J.)

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