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ORDER SHEET
WPO No.1298 of 2023
IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
ORIGINAL SIDE

MALA SADHUKHAN
-Versus-
THE KOLKATA MUNICIPAL CORPORATION & ORS.

BEFORE:
The Hon'ble JUSTICE AMRITA SINHA
Date:21st June, 2023.

Mr. Raghunath Chakraborty, Adv.
Mrs. Amrita De, Adv.
...for the Petitioner.

Mr. Gopal Chandra Das, Adv.
Mr. Rudranil De, Adv.
...for KMC.

The Court:-Petitioner is guilty of raising unauthorized construction. The Deputy Chief Engineer (Civil)/South, by an order dated 4th August, 2016, in a proceeding conducted for dealing with the unauthorized construction under Section 400 (1) of the Kolkata Municipal Corporation Act, 1980, permitted the person responsible to retain the unauthorized construction subject to the condition as mentioned in the said order.

The person responsible was to submit an affidavit declaring on oath that no construction whatsoever in the impugned premises without prior sanction from the authority will be done. A further certificate was to be produced from any Kolkata Municipal Corporation empanelled Structural Engineer certifying that the structural stability and foundation of the impugned constructions are safe and sound and the materials used as well as workmanship is as per the latest edition of National Building Code of India.

Necessary retention charges as well as shortfall of three numbers of car parking space of the Kolkata Municipal Corporation as calculated by the

department was to be paid. Non compliance of the aforesaid condition within the stipulated time period would result in demolition of subject structure. The person responsible was to deposit the retention charges within thirty days from the issue of the order.

Demand notice was issued for payment of the retention charges on 31.03.2014. The charges for retention was assessed at Rs.3,34,304/- only.

By a communication made in April, 2014, the predecessor-in-interest of the petitioner sought for extension of time for a month from 1st May, 2014 to deposit the demanded amount. It appears that the said amount has not been deposited till date.

The Kolkata Municipal Corporation issued notice under Sections 544 & 546 of the Kolkata Municipal Corporation Act, 1980 on 07.06.2023 intimating that the men and agents of the Kolkata Municipal Corporation shall enter the premises no. 2/85, Sucheta Nagar, Ward No.105, Borough- XII on 23.06.2023 for demolishing the unauthorized structure in accordance with the order passed in the year 2016.

On receipt of the aforesaid notice, the petitioner filed an appeal before the Municipal Building Tribunal along with an application seeking condonation of delay in preferring the appeal.

Prayer has been made for directing the appellate authority to decide the appeal at the earliest.

The conduct of the petitioner can neither be appreciated nor accepted by the Court. As far back as in the year 2014, the retention charges were assessed and demand notice raised. Request was made for extension of a month's time

for depositing the amount. Aforesaid action implies that the person responsible admitted the demand that was raised by the Corporation and accepted to pay the said amount, but merely prayed for extension of time for depositing the same. Since 2014 till the date of issuance of the notice under Sections 544 and 546 in June, 2023, no steps were taken either to challenge the order or to act in accordance with the condition mentioned in the order of retention.

Conduct of the petitioner implies that the unauthorized construction is being tried to be enjoyed without fulfilling the conditions permitting retention of the same. The same is absolutely not permissible in law. As the offending structure has been permitted to be retained the petitioner ought to have taken prompt steps to pay the retention charges as sought for.

In view of the above, the Court refrains from exercising jurisdiction in the matter.

Writ petition fails and is hereby dismissed.

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.)