

ORDER

OD – 6

WPO/1318/2023
IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION

SHIBNATH HAIT
VERSUS
THE KOLKATA MUNICIPAL CORPORATION AND ORS.

BEFORE:

The Hon'ble JUSTICE AMRITA SINHA

Date : 22nd June 2023.

Appearance:

Mr. P.S. Deb Barman, Advocate
Mr. Amit Gupta, Advocate
.... for petitioner.

Mr. Gopal Chandra Das, Advocate
Ms. Sabnam De, Advocate
.... for respondents.

THE COURT:- The matter relates to premises no. B/6/H/2, Shyampukur Street, Kolkata – 700004, Ward No.10, Borough-II. The Kolkata Municipal Corporation has taken steps for demolition of the construction made thereat. The petitioner is aggrieved by the same. It has been submitted by the petitioner that an old construction existed at the said place and the petitioner is only making reconstruction of the same.

Notice under Section 401 of the KMC Act, 1980 was served upon the petitioner on 6th April 2023 directing the petitioner to immediately stop the construction work as the same was being made without obtaining any sanction. Intimation was served upon the Shyampukur Police Station on the same date.

The department re-inspected the premises on 17th April 2023 and it was found that the person responsible resumed the construction work by defying the stop-work notice. Requisition for round-the-clock police posting was sent on 17th April 2023. The file was forwarded to the higher authority for taking necessary steps in the matter. Section 400(8) of the KMC Act, 1980 has been invoked to demolish the unauthorised construction.

According to the petitioner, the Corporation ought to have taken steps under Section 400(1) of the Act and ought not to have invoked the provision of Section 400(8) of the Act.

It has been submitted that no opportunity of hearing was given to the petitioner to defend the construction made. It has been further submitted that yesterday, part demolition took place and the men and agents of the Corporation will visit the place today for effecting further demolition. Prayer has been made for setting aside any proceeding initiated under Section 400(8) of the Act.

Learned advocate representing the Kolkata Municipal Corporation has obtained instruction from the Executive Engineer, Building Department, Borough-II signed on 21st June 2023 wherein it has been mentioned that a five-storied building has been constructed without obtaining any sanctioned plan. The authority proceeded to invoke the provision of Section 400(8) of the Act.

It appears from the submissions made on behalf of the parties and upon perusal of the instructions forwarded by the Executive Engineer of the KMC that the petitioner is guilty of raising unauthorised construction of a five-storied building without obtaining any sanctioned plan.

According to the provisions of law, construction can be made only upon obtaining sanction from the Corporation and not prior thereto. The petitioner contends that re-construction was going on. The work of re-construction also requires prior sanction. The petitioner has not obtained any sanction from the Corporation for raising the five storied structure.

On 6th April 2023 when the premises was inspected, a notice under Section 401 of the Act was issued directing the petitioner to immediately stop all construction work. The petitioner defied the said

order and merrily went on with the work of construction and raised further floors.

The said action of the person responsible for making construction is absolutely contrary to law. Such type of action cannot be supported by a Constitutional Court. The petitioner contends that there has been violation of the principles of natural justice by not affording an opportunity of hearing to the petitioner prior to causing the demolition. Provision of Section 400(8) of the KMC Act does not require grant of prior opportunity of hearing.

The Corporation was of the opinion that immediate action is required to be taken for dealing with such flagrant unauthorized construction. The Corporation detected the unauthorised construction in April 2023 and took steps under Section 400(8) of the Act in June 2023 after noticing that stop work order was defied and illegal construction continued. The same has to be taken as immediate action taken to deal with such unauthorised construction.

If such illegal constructions are not stopped or demolished forthright, the persons responsible for making such illegal construction will get a free hand and continue with unauthorised construction and thereafter proceed for regularization of the same. The averment of the

petitioner claiming to be a law-abiding citizen of the country cannot be accepted as he is guilty of making massive unauthorized construction.

No relief can be granted to the petitioner in the instant writ petition.

The writ petition fails and is hereby dismissed.

Urgent photostat certified copy of this order be supplied to the parties, if applied for, as early as possible.

(AMRITA SINHA, J.)

s. kumar