

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
ORIGINAL SIDE

APOT/192/2023
with
WPO/1318/2023
IA NO.GA/1/2023

SHIBNATH HAIT
VERSUS
THE KOLKATA MUNICIPAL CORPORATION AND ORS.

BEFORE:

The Hon'ble JUSTICE ARIJIT BANERJEE

AND

The Hon'ble JUSTICE APURBA SINHA RAY

Date : 24th July, 2023.

Appearance:

Mr. Kallol Basu, Adv.

Mr. Anindya Bose, Adv.

Mr. Amit Gupta, Adv.

Ms. Debangana Dey Nayak

Mr. Mridul Biswas, Adv.

...for appellant.

Mr. Gopal Chandra Das, Adv.

Ms. Sabnam De, Adv.

For KMC.

The Court : This appeal is directed against a judgment and order dated June 22, 2023 whereby the appellant's writ petition being WPO/1318/2023 was dismissed.

The appellant is apparently the person responsible for the construction at premises no. B/6/H/2, Shyampukur Street, Kolkata- 700 004. It is a five-storied building. There is no sanctioned building plan in respect of the construction.

Notice under section 401 of the Kolkata Municipal Corporation Act, 1980 was served on the appellant/writ petitioner by Kolkata Municipal Corporation on April 6, 2023 calling the appellant to immediately stop the construction work. On April 17,

2023, it was found that the writ petitioner had resumed the construction work by defying stop-work notice. Requisition for 24 hours police vigilance was sent on April 17, 2023. The Corporation authorities decided to invoke section 400(8) of the KMC Act, 1980 for immediate demolition of the unauthorized construction.

Being aggrieved by the aforesaid, the appellant approached the learned single Judge. He contended that action should be taken under section 400(1) of KMC Act and this was not a case for invocation of the emergency power provided in section 400(8) of the Act. Prayer was made before the learned single judge for setting aside any proceeding initiated under section 400(8) of the Act.

The learned Judge noted the submission made on behalf of KMC that the five-storied building had been constructed without obtaining any sanctioned plan. The authorities decided to invoke section 400(8) of KMC Act upon finding that the writ petitioner had defied the stop work notice.

Learned Judge dismissed the writ petition with the following observations:

“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 reconstruction 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 said⁴ 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 the⁵ petitioner claiming to be a law-abiding citizen of the country cannot be accepted as he is guilty of making massive unauthorized construction.”

Being aggrieved, the writ petitioner is before us by way of this appeal.

Learned Advocate for the appellant says that there was no such urgency in the matter which justified the Corporation

authorities invoking section 400(8) of the KMC Act. That provision is draconian in nature and ought to be pressed into service only when there is immediate danger to life or limbs of people or other property. The present case is not such a case. The authorities should have initiated proceedings under section 400(1) of KMC Act. This would have given an opportunity to the appellant to participate in the proceedings and thereafter to challenge any adverse order by filing a statutory appeal. The appellant has been deprived of such opportunity. The learned Judge should have allowed the writ petition.

We have not called upon the learned Advocate of KMC to make submissions.

We are astonished that the appellant had the guts to construct a five-storied building without obtaining the prior permission of KMC. We completely agree with the learned single Judge that such action cannot be supported in any manner. If any degree of leniency is shown to such reckless people, who have no respect for the law of the land, the same will send a very wrong signal to the members of the society at large. Rule of law must prevail. A citizen cannot be permitted to put up a construction in violation of the law of the land and then claim regularization thereof.

We see absolutely no infirmity in the order under appeal. To our query as to why the demolition work has not been completed, learned Advocate for the Corporation tells us that because of pendency of the instant appeal, the Corporation, after making part demolition, has stayed its hands. We make it clear that Corporation shall complete the demolition work at the earliest and in any event within 4 weeks from date.

The appeal and the connection application are accordingly dismissed.

Since no affidavit-in-opposition has been called for, the allegations made in the petition are deemed to be treated as not admitted by the respondent.

[ARIJIT BANERJEE, J.]

[APURBA SINHA RAY, J.]

dg/