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ORDER SHEET
WPO No.1404 of 2023
IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
ORIGINAL SIDE

BISWAJIT BISWAS
-Versus-
THE KOLKATA MUNICIPAL CORPORATION & ORS.

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

Appearance:
Mr. Apurba Ghosh Adv.
...for Petitioner.

Mr. Barin Banerjee, Adv.
Ms. Debangana Dey Nayak, Adv.
...for KMC.

The Court:-The petitioner is aggrieved by the notice dated 30.06.2023 issued under Sections 544 & 546 of the Kolkata Municipal Corporation Act, 1980 intimating the petitioner that the assistants and workmen of the Corporation will enter the premises no. 8, Dr. N. G. Saha Road in Ward No. 128 under Borough-XIV for demolition of the unauthorized structure in terms of the order passed by the Special Officer (Building) on 06.07.2022 under Section 400(1) of the Kolkata Municipal Corporation Act, 1980.

The petitioner submits that notice of hearing under Section 400(1) of the Kolkata Municipal Corporation Act, 1980 was not served upon him. The petitioner also submits that a sum of Rs.65,344/- has been paid on account of regularization charges of the unauthorized construction.

Prayer has been made for setting aside the impugned notice issued under Sections 544 & 546 of the Act.

From the documents annexed to the writ petition, it appears that the petitioner filed an earlier writ petition being WPO No.1325 of 2023 challenging the order of demolition passed by the Special Officer (Building) on 06.07.2022. On the submission that the notice of hearing was not

issued to the petitioner, the Court adjourned the said matter till 26.07.2023 for ascertaining proper facts.

Today, learned advocate representing the Kolkata Municipal Corporation has produced documents to show that the petitioner was present at the time of hearing.

Instruction provided by the engineers of the Kolkata Municipal Corporation mentions that the petitioner is guilty of unauthorized construction of G+3 storied building by deviating from the sanctioned plan. Proceeding under Section 400(1) of the Kolkata Municipal Corporation Act was initiated and notice of hearing served upon the petitioner. The petitioner attended the hearing on 27.06.2022.

The Special Officer (Building) passed order of part retention and part demolition on 06.07.2022 and the same was approved by the appropriate authority of the Kolkata Municipal Corporation on 05.04.2023. The petitioner did not comply the order for part demolition and, accordingly, the impugned notice under Sections 544 & 546 of the Kolkata Municipal Corporation Act has been issued and demolition programme fixed today, that is, 13.07.2023.

Upon hearing the submissions made on behalf of both the parties and on perusal of the documents annexed to the writ petition and also the documents produced before this Court, it appears that the petitioner was duly heard in the proceeding under Section 400(1) of the Kolkata Municipal Corporation Act and the order of demolition was passed long back.

There is no order from the superior forum either setting aside or staying or modifying the order of demolition. Accordingly, the Corporation is duty bound to implement the said order.

Submission of the petitioner that the payment has been made for regularization of the unauthorized construction appears to be incorrect. The payment that has been made is not the charges for regularization but the security deposit that has been accepted by the Corporation.

In view of the above, no relief can be granted to the petitioner in the instant writ petition. The writ petition fails and is hereby dismissed.

Affidavit of service filed in Court today is taken on record.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties upon compliance of all legal formalities.

(AMRITA SINHA, J.)

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