

ORDER SHEET
WPO No.1483 of 2023
IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
ORIGINAL SIDE

SANTOSH KUMAR GUPTA & ANR.

-Versus-

THE KOLKATA MUNICIPAL CORPORATION & ORS.

BEFORE:

The Hon'ble JUSTICE AMRITA SINHA

Date:10th August, 2023.

Appearance:

Mr. Raghunath Chakraborty, Adv.
Mr. Supratik Shyamal, Adv.
Ms. Sonali Sengupta, Adv.
Ms. Sabarnee Chatterjee, Adv.
Ms. Jayashree Gayen, Adv.
...for Petitioners.

Mr. Srijan Nayek, Adv.
Mrs. Sima Chakraborty, Adv.
...for KMC.

The Court:- The order dated 12.07.2023 passed by the Executive Engineer (Civil)/Building/ Borough Nos. IV & V allegedly in compliance of the direction passed by the Court in WPO No.1252 of 2023 (Santosh Kumar Gupta Vs. Kolkata Municipal Corporation & Ors.) is impugned in the present writ petition.

An earlier writ petition was disposed of by the Court directing the Executive Engineer to decide the issue of raising construction by the petitioners allegedly to prevent sun light and rain water from percolating in the premises. The construction in question is C.I. shed constructed at the roof of the third floor of the premises No.18, Acharyya Prafulla Chandra Road, Kolkata-700009 without obtaining any sanction or approval from the department.

The petitioners repeat and reiterate their stand that the shed was constructed to prevent sun light and rain water from percolating.

The Executive Engineer considered the issue after hearing the parties but did not take into consideration the reasoning of the petitioners for making the said construction.

The impugned order was passed directing the private respondent to demolish the unauthorized C.I. shed at his own costs.

The petitioners in the earlier writ petition and in the present writ petition are the same and they take responsibility for raising the structure in question.

In such a situation, there is no occasion on the part of the Executive Engineer to direct the private respondent to demolish the C.I. shed at his own costs.

The order in question appears to have been passed in a mechanical manner without proper application of mind. The impugned order is non-speaking and there is no discussion about the reasoning put forth for raising the construction.

In view of the above, the said order is liable to be set aside and is, accordingly, set aside.

The Executive Engineer is directed to re-hear and decide the matter afresh at the earliest, but positively within a period of four weeks from the date of communication of this order. The notice of hearing shall be served upon the necessary parties through registered post.

In the event the petitioners refuse to accept service of the notice of hearing, then it will be open for the Executive Engineer to affix the notice of hearing at conspicuous places in and around the subject premises so that the petitioners and any other interested person of the subject structure is made aware of the proceeding in question.

A reasoned order shall be passed and communicated to the parties immediately thereafter.

The writ petition stands disposed of.

Instruction given by the Executive Engineer of the concerned Borough
be retained with the records.

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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