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ORDER SHEET
WPO No.1475 of 2023
IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
ORIGINAL SIDE

RITESH PANDEY
VERSUS
THE KOLKATA MUNICIPAL CORPORATION & ORS.

BEFORE:
The Hon'ble JUSTICE AMRITA SINHA
Date:3rd August, 2023.

Appearance:
Mr. Raghunath Chakraborty, Adv.
Ms. Amrita De, Adv.
...for Petitioners.

Mr. Alak Kumar Ghosh, Adv.
Mrs. Sima Chakraborty, Adv.
...for KMC.

The Court:-The matter relates to the alleged unauthorized construction at premises no.111, Ashutosh Mukherjee Road, Ward No.72, Borough-VIII under jurisdiction of Kolkata Municipal Corporation.

Allegation is that the petitioner constructed the corrugated shed on the roof top of the said structure without any sanction.

A notice under Section 401 of the Kolkata Municipal Corporation Act, 1980 was issued on 11.02.2023. The petitioner submits that on 1st August, 2023 the men and agents of the Kolkata Municipal Corporation visited the premises for demolition of the said structure. No notice or opportunity of hearing was given to the petitioner prior to affecting the order of demolition.

The petitioner submits that prior to the demolition being carried out an opportunity of hearing ought to have been given to the petitioner to defend the construction made. The petitioner contends that the shed has been constructed to prevent percolation of rain water and to restrict the heat of the sun. The petitioner contends that the Corporation, if at all, ought to have taken steps under Section 400(1) of the Act and not under Section 400(8).

The aforesaid contention of the petitioner is opposed by the learned advocate representing the Corporation.

It has been submitted that the petitioner does not have any legal right to approach the Court. The petitioner proceeded with the construction work despite stop work notice being issued.

It has further been submitted that the Corporation took immediate steps by invoking the provision of Section 400(8) of the Act. There is no delay in initiating the demolition proceeding and if the Court interferes in the matter then the unauthorized construction cannot be demolished.

Upon hearing the parties it appears that stop work notice was issued on 11.02.2023 and the men and agents of the Corporation visited the premises on 1st August, 2023 for effecting demolition work.

Section 400(8) of the Act lays down that notwithstanding anything contained in the Chapter, if Mayor-in-Council is of the opinion that immediate action is called for in relation to a building or work being carried on in contravention of the provision of this Act, it may, for reasons to be recorded in writing, cause such a building or work to be demolished forthwith.

It appears that in the instant case work in question stood concluded long ago. There is hardly any reason to take immediate action in the matter for demolition of the corrugated shed without affording an opportunity of hearing to the petitioner.

Had the construction been of such nature that immediate action was required to be taken, then the Corporation ought to have acted without any delay.

By the time notice under Section 401 was issued and action taken under Section 400(8), four months had elapsed. The authority ought to have afforded hearing to the petitioner in the meantime. Decision to demolish the unauthorized construction can always be taken after hearing the petitioner.

Apart from the construction of the corrugated shed, the Corporation is yet to identify whether there is any further unauthorized construction at the

subject premises. Accordingly, the Court is of the view that the Corporation can certainly proceed to take action against the unauthorized construction, however, after giving an opportunity of hearing to the petitioner.

The facts of the case do not call for any action to be taken under Section 400(8) of the Act at such belated point of time.

The petitioner is, however, restrained from covering the side of the roof top and not to change the mode of use of the subject structure till the matter is finally decided by the Corporation.

The writ petition stands disposed of.

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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