

OD-4

ORDER SHEET  
WPO No.1582 of 2023  
IN THE HIGH COURT AT CALCUTTA  
Constitutional Writ Jurisdiction  
ORIGINAL SIDE

MD. NAWAB  
VERSUS  
THE STATE OF WEST BENGAL & ORS.

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

Appearance:  
Md. Nauroz Rahber, Adv.  
Ms. Ankita Dey, Adv.  
Mr. Rashed Rashid, Adv.  
Md. Jawward, Adv.  
...for Petitioner.

Mr. Biswajit Mukherjee, Adv.  
Ms. Piyali Sengupta, Adv.  
...for KMC.

Mr. Dyutiman Banerjee, Adv.  
Mr. Sourat Nandy, Adv.  
...for Private Respondent.

Mr. Ovik Sengupta, Adv.  
..for State Respondent.

The Court:-The matter relates to certain unauthorized construction at premises no. 14/H/2, Chamru Singh Lane, P.S.- Narkeldanga, Ward No.29, Borough-III, Kolkata-700011.

The petitioner alleges illegal and unauthorized construction at the subject premises.

Learned advocate representing the private respondent denies the allegation of the petitioner.

The engineers of the Kolkata Municipal Corporation have filed a report before this Court wherefrom it appears that a demolition case was initiated for erection of number of columns over ground floor roof slab. The person responsible could not produce any valid documents in support of the said construction.

A stop work notice under Section 401 of the Kolkata Municipal Corporation Act, 1980 was served upon the person responsible on 11<sup>th</sup>

September, 2017 with intimation to the Narkeldanga Police Station. FIR was lodged against the person responsible on 22nd September, 2017 for continuing with the construction work defying the stop work notice.

Show cause notice under Section 400(1) of the Kolkata Municipal Corporation Act, 1980 was served upon the person responsible on 8<sup>th</sup> January, 2019 and hearing was conducted on several occasions. Special Officer (Building) passed an order on 27<sup>th</sup> February, 2020 directing demolition of the entire four storied unauthorized structure.

Thereafter on transfer of the concerned engineer the department lost trace of the file.

After service of the present writ petition, further inspection was conducted and it is found that the building is five storied and fully occupied. File has presently been sent to the Mayor-in-Council for approval of demolition.

From the instruction forwarded by the engineers of the Corporation, it appears that though an order of demolition was passed way back in February, 2020, the same is yet to be implemented.

The reason for non implementation of the order is the missing file. It is quite mysterious as to how the file where the order of demolition is required to be implemented simply got lost. The alleged file remained untraceable for the last three years. Only after the present writ petition was filed, the file could be traced out and on inspection it was found that a further storey was constructed over and above the four illegal floors.

It appears that the entire building is constructed unauthorizedly without any sanctioned plan. The order of demolition is liable to be implemented at once.

The Commissioner of the Kolkata Municipal Corporation or his delegate is directed to take immediate steps for demolition of the unauthorized construction by implementing the order of demolition passed way back in

February, 2020. As regards the additional floor that has been constructed after the order of demolition was passed, the same is pending approval for demolition before the Mayor-in-Council.

The Commissioner or his delegate is also directed to take appropriate steps against the engineers who were responsible for implementing the order of demolition. Had the order of demolition been implemented in proper time, further additional floor could not have been constructed. Because of delay in implementing the order of demolition, third party right has been created and the construction is presently fully occupied. Appropriate notice for vacating the unauthorized construction shall be served by the Corporation upon all the occupants of the subject structure.

The Corporation shall take the help of the Narkeldanga Police Station for implementing the order of demolition. In the event the occupants of the subject structure voluntarily fail to vacate the same, then the police shall take steps for vacating the same so that the construction may be demolished.

Steps shall be taken in the matter at the earliest, but positively within a period of four months from the date of communication of this order.

Writ petition stands disposed of.

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

Report filed by the engineers of the Corporation dated 22.09.2023 is retained with the records.

Report filed by the Officer-in-Charge of the Narkeldanga Police Station dated 25.09.2023 is also kept with the records.

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

(AMRITA SINHA, J.)