

OD-2

ORDER SHEET

WPO No.1585 of 2023
IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
ORIGINAL SIDE

MD. OMAR @ RAJA
VS.

THE KOLKATA MUNICIPAL CORPORATION & ORS.

BEFORE:

The Hon'ble JUSTICE AMRITA SINHA

Date: 12th October, 2023.

Appearance:

Mr. Kallol Basu, Adv.
Mr. Anindya Bose, Adv.
Mr. Amit Gupta, Adv.
...for Petitioner.

Mr. Srijan Nayak, Adv.
Mr. Gopal Chandra Das, Adv.
... for KMC.

Mr. Paromita Pal, Adv.
... for State.

The Court:- The matter relates to the premises no.7/3/H/2, Dr. M. N. Chatterjee Street, Ward No.36, Borough-V.

A five storied RCC frame structure has been constructed without any sanction of the Corporation.

A stop work notice under Section 401 of the Kolkata Municipal Corporation Act, 1980 was served upon the person responsible on 29.09.2022 with intimation to Narkeldanga Police Station on the same date. FIR under Section 401A of the Kolkata Municipal Corporation Act, 1980 was lodged with the police. Round the clock police posting was requisitioned on 20.10.2022. Notice under Section 400(1) of the Kolkata Municipal Corporation Act, 1980 was issued on 31.01.2023 and file was sent to the higher authority for taking necessary action.

As unauthorised construction continued despite the stop work notice and the police complaint, requisition for round the clock police posting was made for the second time on 06.02.2023. Demolition sketch was prepared and the file sent to the higher authority on 07.02.2023.

As repeated efforts to stop the work of unauthorised construction failed, requisition for round the clock police posting was sent for the third time on 30.05.2023.

In January, 2023, the construction was up to the two storey level, but the construction went on at so very fast pace that right now the same is a five storied building standing tall.

The Mayor-in-Council adopted a resolution in the meeting dated 18.08.2023 for invoking provision of Section 400(8) of the Kolkata Municipal Corporation Act, 1980 by observing that the construction, if allowed to stand, may collapse at any moment of time leading to accident resulting in loss of human life and property and will create several hazards like fire hazards and environmental hazards. The Mayor approved the resolution of the Mayor-in-Council on 28.08.2023.

On account of communication gap between the concerned Borough and the higher authority, the Executive Engineer erroneously issued a notice of hearing under Section 400(1) of the Kolkata Municipal Corporation Act, 1980 directing the person responsible to attend the hearing.

It appears from the submissions made on behalf of the parties and the materials produced before this Court that the person responsible was desperate to raise the construction. In spite of repeated notices forwarded to stop the unauthorised construction, the person responsible was adamant to continue with the same. Round the clock police posting also failed to deter the person responsible to stay away from the construction.

The five storied RCC framed structure does not have any authority to stand in the eye of law. The Corporation has invoked the provision of Section 400(8) of the Kolkata Municipal Corporation Act to demolish the same.

Learned advocate representing the petitioner submits that the delay in invoking the aforesaid provision implies that there is no immediate threat to the

construction and, accordingly, an opportunity of hearing ought to be given under Section 400(1) of the Act prior to taking any step for demolition of the same.

Law permits construction only after obtaining prior sanctioned plan. Raising a five storied structure without a plan and thereafter seek regularization of the same, ought not to be supported. If the same is permitted, then the tendency to raise construction without a plan will rise and none will bother to obtain plan prior to raising construction. Only after the unauthorized construction is detected, then the builder will approach the authority for regularization of the unauthorised construction. At times the builder is also encouraged to approach Court alleging illegal action on the part of the Corporation to take steps contrary to the provision of law ignoring or disregarding the fact that law was not followed, rather law was violated, at the time of raising construction.

Admittedly, in the instant case, there is no plan and/or sanction in favour of the subject construction. The engineers of the Corporation appear to have tried their best to stop the construction at the base level, but failed to do so. Presently, the order of the superior authority being the Mayor-in-Council's decision approved by the Mayor is liable to be implemented.

Granting any further leniency to the person responsible to hold on to the construction will demoralise the engineers who took steps to lodge repeated complaints and thereafter followed up the matter to ensure that the demolition is conducted.

Any type of mercy shown to such unscrupulous, dishonest builder who not only raises construction without any valid sanctioned plan, but boldly continues with the same despite repeated attempts to stop the same, will be sheer injustice. Such action has to be dealt with an iron hand. Not taking strict action against such builder will send out an adverse message to the society at large and others may be emboldened to followed suit. Unauthorised construction ought not be given and should not be given any premium. The Court ought not to come to the

aid of any corrupt builder who doesn't care for the law and when caught red handed approaches Court and seeks mercy.

The construction in question is liable to be demolished at the earliest.

The Executive Engineer of the concerned Borough is directed to take all necessary steps to ensure that the construction is demolished at the earliest, but positively within a period of eight weeks from the date of communication of this order.

Interim order stands vacated. The writ petition stands dismissed.

Officer-in-Charge of Narkeldanga Police Station is directed to render all necessary help and assistance to the men and agents of the Corporation at the time of implementation of the order of demolition.

It will be open for the Officer-in-Charge of Narkeldanga Police Station to seek help from the superior authority, Joint Commissioner of Police [HQ], for providing additional police force at the time of implementation of the order of demolition.

Report filed by the engineers of the Corporation be retained 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.)