

OD-1

ORDER SHEET

WPO No.1595 of 2023
IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
ORIGINAL SIDE

NIRANJAN KUMAR SEN & ANR.
VS.
THE KOLKATA MUNICIPAL CORPORATION & ORS.

BEFORE:
The Hon'ble JUSTICE AMRITA SINHA
Date:6th October, 2023.

Appearance:
Mr. Rupak Ghosh, Adv.
Mr. Shankarshan Sarkar, Adv.
Mr. Abhijit Sarkar, Adv.
Mr. Abhik Chitta Kundu, Adv.
... for the Petitioners.

Mr. Gopal Chandra Das, Adv.
Mr. Dwijadas Chakraborty, Adv.
... for KMC.

The Court:- The matter relates to certain unauthorized construction at premises no.140, Sri Aurobinda Sarani, Ward No.11, Borough-II of the Kolkata Municipal Corporation.

Construction was made in the year 2013. The person responsible constructed G+ IV storied building in deviation of the plan sanctioned.

A stop work notice was issued under Section 401 of the Kolkata Municipal Corporation Act, 1980 in the year 2014 with intimation to the local Burtolla Police Station. Round the clock police posting was made. A demolition case was initiated.

In the demolition proceeding the Special Officer [Building] vide order date 30.05.2022 directed demolition of the entire fourth floor and the covered open terrace portion in the third floor constructed in deviation of the sanctioned plan. The remaining deviation was permitted to be retained upon payment of fees. Prior to the order passed by the Special Officer [Building] reasonable opportunities of hearing were given to the person responsible.

The learned advocate representing the person responsible attended the hearing which took place on several dates. Even at the final hearing stage the

person responsible was heard. The order passed the Special Officer [Building] was carried in appeal before the statutory appellate forum and the learned Tribunal was pleased to direct the person responsible to demolish the unauthorised portion. Pursuant thereto 300 sq.ft. in the fourth floor of the subject structure has been reported to be demolished.

Petitioners contend that they are the subsequent purchasers of the third floor, the portion of which has been held to be unauthorized. Specific contention is that the notice of hearing was not issued to the petitioners. The petitioners do not have any other place to stay. This is the only portion which they purchased with valuable consideration. It has been submitted that an opportunity of hearing ought to have been given to the petitioners prior to implementing the order of demolition. Prior to July, 2023, the petitioners were never communicated about the order of demolition.

Learned advocate for the petitioners relies upon various provisions of the Kolkata Municipal Corporation Act, 1980 and submits that there is violation of principle of natural justice in not affording opportunity of hearing to the petitioners prior to implementation of the order of demolition.

Learned advocate representing the Corporation submits that the petitioners are occupying the subject premises without obtaining the completion certificate. Despite order passed by the Special Officer [Building] for demolition of the unauthorized portion, the same cannot be implemented in view of the interim orders passed by this Court from time to time.

I have heard and considered the submissions made on behalf of both the parties. It appears that the successor in interest of the owner of the subject property has been impleaded as respondent no.8 in the instant writ petition.

Respondent no.8 is being represented by the learned advocate. The construction in question was, admittedly, made in deviation of the plan sanctioned and despite stop work notice, unauthorized construction continued. Reasonable

opportunities of hearing were given to the owner and the person responsible prior to passing the order of demolition.

The order of demolition was unsuccessfully challenged before the statutory appellate forum. Now, the present writ petitioners have come with a plea that an opportunity of hearing was not given to them and, accordingly, the order of demolition ought not to be implemented prior to granting further opportunity of hearing to the present writ petitioners.

It has been contended that the property in question is mutated in favour of the petitioners and the Corporation ought to have served notice upon the present owners and occupiers of the subject premises.

It appears that the statutory appeal at the instance of the promoters, developers and owner stood dismissed by the statutory appellate forum. The petitioners have stepped into the shoes of the erstwhile owners after purchasing the property. Erstwhile owners/promoters and developers, after they failed to hold on to the unauthorised portion, the present writ petition has been filed at the instance of the subsequent purchasers.

If the submission of the petitioners is to be accepted, then the order of demolition can never be implemented or executed. By this manner the unauthorised construction will remain standing tall and cannot be demolished.

The petitioners submit that they were never made aware by the owners and developers about the unauthorised structure. The petitioners ought to have made thorough searches prior to purchasing the property and ought to have enquired whether the construction in question is in accordance with the sanctioned plan or not.

The principle of natural justice cannot be extended to such an extent so as to permit retention of unauthorized construction.

Special Officer [Building] has permitted retention of certain portions of the unauthorized construction upon payment of necessary charges. The Corporation ought to take steps for implementing the order of demolition at the earliest.

The Court is not inclined to come to the aid of a builder who raises construction without a valid sanctioned plan. If any leniency or mercy is shown to these types of builders, then the menace of unauthorized construction cannot be stopped.

Any interference in the present case will give a premium to the dishonest and unscrupulous builders who raise construction without following the provisions of law. Misplaced sympathy causes injustice to the society. The illegal act of construction without any sanction ought not to be showed any mercy and should be dealt with an iron hand.

The writ petition fails and is hereby dismissed.

Learned advocate representing the petitioners seeks time till 11.10.2023 for implementing the order of demolition.

The Court is of the view that since the festive season has nearly set in, the demolition may be executed after the Durga Puja is over.

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

(AMRITA SINHA, J.)