

OD- 8

IN THE HIGH COURT AT CALCUTTA
SPECIAL JURISDICTION (INCOME TAX)
ORIGINAL SIDE

WPO(P)/11/2022
IA NO. GA/1/2022
SRI NARESH CHOWDHARY
-VERSUS-
THE STATE OF WEST BENGAL AND ORS.

BEFORE :
THE HON'BLE ACTING CHIEF JUSTICE T.S. SIVAGNANAM
And
THE HON'BLE JUSTICE HIRANMAY BHATTACHARYYA
Date : 8th May, 2023

Appearance :
Ms. Jenia Rudra, Adv.
Ms. Megha Chandra, Adv.
...for appellant
Mr. Asutosh Banerjee, Adv.
Ms. Ipsita Banerjee, Adv.
...for State/respondent
Mr. Alok Ghosh, Adv.
..for K.M.C.

The Court : - By this public interest litigation the petitioner has alleged that the private respondents are putting up construction in violation of law and in spite of stop work notice the construction is proceeding. Several other averments have been set out in the affidavit filed in support of the writ petition. The respondent has filed the report stating on inspection the deviation from the sanction plan has been noticed and work of erection has been suspended and demolition case has already been initiated for suitable action under Section 100 of the KMC Act, 1980. The petitioner's grievance was that the private respondent in spite of such action being taken by the K.M.C. the private

respondents were proceeding with the construction. This submission was taken note of by the Hon'ble Division Bench and in its order dated 23.09.2022 the direction was issued to the State to inform the police to keep strict vigil and not permit to any unauthorised construction. The learned Advocate appearing for the private respondent submitted that no construction is being carried out by his clients. This fact has to be verified by the KMC. In any event, since action has already been initiated by the respondent Corporation, the private respondents have to approach the respondent Corporation and submit their reply to whatever action that has already been initiated. We note that the respondent Corporation has taken a categorical stand that the construction put up by the private respondent are in violation of the sanctioned plan. The private respondents seek to question the correctness of the stop work notice by filing GA/1/2022 as also the maintainability of the writ petition. In this writ petition the challenge to stop work notice issued by K.M.C. cannot be entertained and such a prayer stands rejected. So far as maintainability of the writ petition is concerned, private respondent would allege that the writ petitioner is a political functionary and there is no public interest involved.

We are not fully convinced with the said submission as it has been found by the K.M.C. that construction put up is in deviation of the sanctioned plan. If that be so, it does not require any third party to lodge a complain or to approach the Court as it will be well within the

jurisdiction of the K.M.C. to take action in accordance with law, which appears to have taken by issuance of stop work notice. Therefore, no further direction is necessary in this writ petition and the writ petition stands disposed of by directing the K.M.C. and the State to ensure that no illegal construction is being put up and parallelly giving liberty to the private respondents to approach K.M.C. with all the documents to make out a case that there is no deviation.

As it has been stated that already action has been initiated under Section 400 of the K.M.C. Act, the same shall be take to be logical conclusion.

(T.S. SIVAGNANAM)
ACTING CHIEF JUSTICE

(HIRANMAY BHATTACHARYYA, J.)