

OD-9

ORDER SHEET
WPO No.1731 of 2023
IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
ORIGINAL SIDE

DAYA SHANKAR SHAHI
VERSUS
THE KOLKATA MUNICIPAL CORPORATION & ORS.

BEFORE:
The Hon'ble JUSTICE AMRITA SINHA
Date:18th October, 2023.

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

Mr. Gopal Chandra Das, Adv.
Mr. Saurav Chaudhuri, Adv.
...for KMC.

The Court:-The petitioner alleges illegal and unauthorized construction at the instance of the private respondent at 87, Diamond Harbour Road, Ward No.119, Borough-XIII, Kolkata-700038.

Objection filed against such unauthorized construction is yet to be disposed of.

None represents the private respondents.

Report filed by the Assistant Engineer (Civil), Borough-XIII & XIV signed on 17.10.2023 mentions that on receiving a complaint, departmental inspection was caused. It revealed that the person responsible constructed a two storied RCC framed structure with some columns extending from the first floor roof level without any sanctioned plan. A stop work noticed under Section 401 of the Kolkata Municipal Corporation Act, 1980 was served upon the person responsible with intimation to New Alipore Police Station.

As the person responsible continued with the unauthorized work defying stop work notice, FIR under Section 401A was lodged. The demolition sketch and the infringement statement have been prepared and placed before the higher authority.

In view of the order that I propose to pass, none of the non appearing respondents will be prejudiced if the writ petition is disposed of in the following manner.

The instant writ petition is disposed of by directing the respondent No.5 being Executive Engineer, Building Department/Borough-XIII, Kolkata Municipal Corporation herein to consider and dispose of the representation dated 25th August, 2023 filed on behalf of the petitioner strictly in accordance with law, after giving reasonable opportunity of hearing to the petitioner and all other necessary parties and pass a reasoned order within a period of twelve weeks from the date of communication of this order and communicate the reasoned order to all the parties immediately thereafter.

A spot inspection shall be conducted to ascertain the nature and extent of unauthorized construction.

In the event the aforesaid respondent is of the considered opinion that the construction has been made either in violation of the plan sanctioned or devoid the sanction plan, then necessary steps shall be taken to deal with such unauthorized construction, in accordance with law.

The aforesaid respondent shall restrict the consideration of the representation with regard to unauthorized construction only and not enter into or decide any private dispute of the parties regarding right, title and interest in respect of the aforesaid land.

It is made clear that this Court has not entered into the merits of the claim made by the petitioner and all points are left open to be decided by the aforesaid respondent at the time of consideration of the representation of the petitioner.

Learned advocate representing the petitioner is directed to forward a copy of the representation dated 25th August, 2023 to the aforesaid respondent at the time of communicating the order of the Court.

The writ petition stands disposed of.

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

Report dated 17.10.2023 filed by the engineer of the Kolkata Municipal Corporation is retained with the records.

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

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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