

OD-7

WPO/1747/2023

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
ORIGINAL SIDE

BAPPA DAS

-Versus-

KOLKATA MUNICIPAL CORPORATION AND
ORS.

BEFORE

The Hon'ble Justice AMRITA SINHA

Date: 17th November, 2023

APPEARANCE:

Mr. Sumitava Chakraborty, Adv.

Mr. Abhishek Mukherjee, Adv.

...for the petitioner.

Mr. Gopal Chandra Das, Adv.

Mr. Subhrangshu Panda, Adv.

...for K.M.C.

The court: Affidavit of service filed in Court is taken on record.

The petitioner claims to be the owner of a portion of premises no.3B, Sita Kanta Banerjee Lane, Ward No.8, Borough-I, Kolkata Municipal Corporation.

The petitioner is aggrieved by the notice issued under Section 401 of the Kolkata Municipal Corporation Act, 1980 on 16th October, 2023 addressed to the petitioner and other persons describing them as persons responsible for

making construction in deviation of the sanctioned or approved plan in respect of premises no.3A and 3B.

Specific case of the petitioner is that he is no way related to premises no.3A and, accordingly, the impugned notice is liable to be set aside. It has been submitted that construction may be carried out at premises no.3A but the petitioner is no way responsible for making such construction.

It has been submitted that reconstruction plan was approved by the Kolkata Municipal Corporation on 28th February, 2023 and the same is valid till February, 2025. The petitioner is carrying on construction strictly in accordance with the approved plan.

Learned Advocate representing the Kolkata Municipal Corporation has received instruction from the Assistant Engineer (Civil)/Building/Borough-I, wherein it has been mentioned that on inspection of premises no.3B it was found that construction with addition and alteration of three storied building is being carried on in deviation from the approved reconstruction plan by demolishing all the existing structure. Moreover construction of R.C.C. slab at first and second floor roof level supported by brick wall is being carried on in a portion of premises no.3A which is adjoining and adjacent to premises no.3B.

To stop further progress of unauthorised construction, notice under Section 401 of the KMC Act, 1980 has been issued upon the persons responsible with intimation to Shyampukur Police Station. The matter is under process of Section 400 of the Act.

Learned Advocate for the petitioner submits that no inspection was conducted prior to issuance of the impugned notice under Section 401. The petitioner has not been intimated with regard to the details of the alleged deviation.

Learned Advocate appearing for the Corporation submits that the petitioner has been intimated about the deviation. A demolition sketch was also prepared and the petitioner has been made aware of the same.

From the documents annexed to the writ petition, there is no evidence to show that the demolition sketch or the details of the unauthorised construction was forwarded to the petitioner. There is nothing on record to suggest that inspection was made upon notice to the persons responsible for making construction.

In view of the above, the Executive Engineer of the concerned borough is directed to cause a spot inspection upon prior notice to all the necessary parties to ascertain the exact nature and extent of the unauthorised construction and

intimate the same to the persons responsible for making construction.

Spot inspection shall be conducted at the earliest but positively within a fortnight from the date of communication of this order and details of unauthorised construction to be intimated to the petitioner within a fortnight thereafter.

The concerned officer of the Kolkata Municipal Corporation shall take steps in the matter to deal with the unauthorised construction in accordance with law.

The instruction forwarded by the concerned officer of the Kolkata Municipal Corporation sent on 18th October, 2023 be retained with the records.

The writ petition, WPO/1747/2023 stands disposed of.

Urgent certified photocopy of this order, if applied for, be supplied to the parties expeditiously on compliance of usual legal formalities.

(AMRITA SINHA, J.)