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**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

W.P.A. 12062 of 2023

**Shila Basak & Anr.
Vs.
Kolkata Municipal Corporation & Ors.**

Mrs. Koyeli Bhattacharyya,
Mr. Bibek Dutta.

.... For the Petitioner.

Mr. Srijan Nayak,
Mr. Subhrangsu Panda,
Ms. Ina Bhattacharyya.

... for the K. M.C.

1. Heard learned counsel appearing on behalf of the parties to this writ petition.
2. Learned counsel appearing on behalf of the petitioners has contended that initially petitioners lodged a complaint before the Kolkata Municipal Corporation alleging, inter alia, that there is one illegal construction of a building at the location P-21, Ramnarayan Pally, Kolkata – 700061 in premises No. 87, Ward No: 128, Borough No: 14 adjacent to premises No. 87A Ward No: 128, Borough No: 14 owned by the petitioners.
3. The specific allegation of the petitioners was against the illegal construction which was made without leaving minimum space required for construction in KMC area. But the said complaint was not adhered to

by the authority concerned and the petitioners were compelled to file one writ petition being WPA 21437 of 2022 before the Co-ordinate Bench, wherein Executive Engineer of the concerned Borough was directed to take steps to deal with the unauthorized construction strictly in accordance with law, after giving a reasonable opportunity of hearing to all the necessary parties at the earliest, but not beyond twelve weeks.

4. Accordingly, Special Officer, Building attached to the Kolkata Municipal Corporation heard the matter in connection with demolition Case No.033-D/Br-XIV/22-23. Special Officer, Building passed an order on 9th January 2023 addressing the issues including the deviation from sanctioned plan but such deviation was found slight in nature. Learned Special, Officer Building also allowed such deviation to remain on payment of fees under Section 400(1) of the Kolkata Municipal Cooperation Act, 1980 giving liberty to the petitioners to file an appeal before the Municipal Building Tribunal, if aggrieved.
5. Learned counsel appearing on behalf of the petitioners has submitted that the issue of illegal construction leaving no mandatory open space has never been addressed by the Special Officer Building attached to the Kolkata Municipal Corporation in the order impugned.
6. Learned counsel appearing on behalf of the Kolkata

Municipal Corporation/respondent has submitted in his usual fairness, that the allegation of the petitioners regarding illegal construction leaving no mandatory space has not been addressed in the order passed by the Special Officer.

7. In the given facts and circumstances, I find that Special Officer Building though detected the illegal construction as well as deviation from sanctioned plan but never addressed the issue of illegal construction without leaving any mandatory space at the time of construction of premises No. 87, Ward No: 128, Borough No: 14 at the location P-21, Ramnarayan Pally, Kolkata – 700061.
8. In the aforesaid view of the matter, the order passed by the Special Officer Building dated 9th January, 2023 is liable to be set aside. Accordingly the order impugned stands set aside.
9. Special Officer Building attached to the Kolkata Municipal Corporation is directed to hear the matter after giving opportunity of hearing to the parties afresh and to decide the only issue of illegal construction leaving no mandatory space, within eight weeks from the date of receipt of this order.
10. With the aforesaid observation and direction, the writ petition stands disposed of.
11. All parties shall act on the server copies of this order duly downloaded from the official website of this

Court.

12. Urgent photostat certified copy of the order, if applied for, be given to the parties on usual undertakings.

(Bibhas Ranjan De, J.)