

Court No. 2
13.8.2024
(Item No. 45)
(AB)

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

W.P.A. 16648 of 2024

Ajoy Adhikary
VS

The Kolkata Municipal Corporation & Ors.

Mr. Soumen Kumar Dutta
Mr. Partha Sarathi Basu
Mr. Sumitava Chakrabartee
Mr. Subham Dutta
Sk. Sayan Uddin

.... For the petitioner

Mr. Subhendu Bandyopadhyay
.... For the State

Ms. Koyeli Bhattacharyya

Mr. Subhrangshu Panda For K.M.C.

Upon urgency being pleaded on behalf of the petitioner and in view of the determination being assigned before this Court, this writ petition has been taken up for consideration by publishing the same in today's cause list.

The petitioner claims to be the owner of a particular premises. Initially the petitioner claims that the Kolkata Municipal Corporation shall take an immediate step for removal of unauthorized construction by demolishing such unauthorized construction at the premises in exercise of its power under **Section 400(1) of the Kolkata Municipal Corporation Act, 1980 (for short 1980 Act)**.

Mr. Soumen Kumar Dutta, learned counsel appearing for the petitioner now contends that, the petitioner has no idea as to the fate of the claim of the petitioner for demolition submitted before the Kolkata Municipal Corporation authority. It is also not within the knowledge of the petitioner, as he submits that,

whether any demolition order has been passed or not by the Kolkata Municipal Corporation authority.

In such circumstance, this writ petition has been filed by the petitioner seeking a direction upon the Kolkata Municipal Corporation authority to demolish the alleged unauthorized construction at the premises.

Mr. Subhendu Bandyopadhyay, learned advocate appears for respondent No. 9.

Ms. Koyeli Bhattacharyya, learned counsel along with Mr. Subhrangshu Panda, learned counsel appearing for Kolkata Municipal Corporation places a report dated **August 5, 2024** signed by the Municipal authorities, the same is taken on record. The content of the report is quoted below:

“There is a sanctioned plan of a III storied residential building of height 10m vide Building Permit No. 2021070035 dated 19/07/2021. Person Responsible encroached mandatory open spaces horizontally up to 2nd floor on all sides which were in deviation from the aforesaid sanction plan. This department had taken action to stop the unauthorized works by imposing notice u/s 401 of KMC Act 1980 vide No. 297 dated 29/07/2022 and Police intimation was sent to local Police Station (Kasba P.S.) dated 29/07/2022. During routine inspection it had been found that person responsible was continue the works defying stop work hence Round- The-Clock police watch posting was imposed on u/s 401(4) of the KMC Act 1980 on 20.08.2022. FIR has been lodged against person responsible u/sec 401A of KMC Act 1980 on 25.8.2022. The demolition proceeding u/sec 400(1) of KMC act 1980 was already been completed & SOB

was pleaded to pass an order on 20/02/20223 (copy enclosed). Against the order of SOB, the person responsible has moved to a Municipal Building Tribunal Vide B.T. appeal No. – 100/2023 dated 30/06/2023. Now the file is pending before Municipal Building Tribunal.”

Since the report shows order of demotion has already been passed by the Kolkata Municipal Corporation authority in exercise of its power under **Section 400** of the **1980 Act** and since some of the parties have already challenged the same before the jurisdictional Municipal Building Tribunal this Court is of the firm view that no further order can be passed in this writ petition.

This writ petition is, therefore, liable to be dismissed. Accordingly, this writ petition **W.P.A. 16648 of 2024** stands dismissed, without any order as to costs.

However, it is made clear that, this Court has not gone into the merits of the writ petition. This order of dismissal of the writ petition shall not preclude the petitioner to avail of any other remedy in accordance with law if available to the petitioner.

The appropriate authority of the Kolkata Municipal Corporation shall also serve a copy of the order passed in exercise of its power under **Section 400** of the said **1980 Act** upon the petitioner.

Photostat certified copy of this order, if applied for, be furnished expeditiously.

(Aniruddha Roy, J.)