

31.07.2024
Sl.12.
Suman
Ct.No.15

WPA 19221 of 2024

Babar Ali Molla and Ors.
Vs.
The Kolkata Municipal Corporation and Ors.

Mr. Biswaroop Bhattacharya
Mr. Sumitava Chakraborty
Mr. Sounak Mondal
..for the petitioners

Ms. Koyeli Bhattacharya
Mr. Subhrangsu Panda
..for KMC

By filing this writ petition, the writ petitioners have challenged a demolition proceeding following an order dated December 9, 2023, initiated under Section 400(8) of the Kolkata Municipal Corporation Act, 1980.

The Corporation alleges that the petitioners have raised an unauthorised construction at premises no.V-90/K/V-90/II, V-90/L & V-9/J, S.A. Farooque Road (Single Building): Ward no.139, Borough-XV, P/S. Rajabagan, for which a stop work notice under Section 400(1) of the Kolkata Municipal Corporation Act, 1980 was issued on January 30, 2023.

The petitioners, however, continued with the unauthorised construction, defying the stop work notice issued by the Kolkata Municipal Corporation. Consequently, the relevant department of the Kolkata Municipal Corporation prepared a demolition proposal

under Section 400 (8) of the Kolkata Municipal Corporation Act, 1980, along with a demolition sketch map.

Thereafter, the Mayor in Council of the Corporation by a resolution dated December 9, 2023, directed to take forthwith action for demolition of the unauthorised construction under Section 400(8) of the Kolkata Municipal Corporation Act, 1980.

Learned advocate appearing for the petitioners submits that the petitioners have a sanctioned plan for a G+2 building. Over and above the sanctioned plan, the petitioners have made a temporary construction on the roof of the building with a RCC shed, and in the basement, constructed a pump room. These constructions were completed in the year 2022.

A bare perusal of the order under Section 400(8) of the Kolkata Municipal Corporation Act, 1980 dated December 9, 2023, clearly suggests that there was no emergent situation to justify the invocation of Section 400(8) of the Kolkata Municipal Corporation Act, 1980. Section 400(8) of the Kolkata Municipal Corporation Act, 1980 is an exception to the general procedure to be adopted by the Corporation for demolition of unauthorised construction under Section 400(1) of the Kolkata Municipal Corporation Act, 1980. The said provision can be invoked where an urgent action is

called for in relation to a building or a work being carried out unauthorisedly.

In the present case, it is clearly apparent that there was no emergent situation so as to invoke the provision of Section 400(8) of the Kolkata Municipal Corporation Act, 1980.

In that view of the matter, I set aside the resolution adopted by the Mayor in Council in December 9, 2023, which appears to be a stereotyped order issued in most cases without specifying how the unauthorised construction at the premises in question may lead to an accident, causing loss to human lives and property.

In view of the above facts, I set aside the order dated December 9, 2023, issued by the Kolkata Municipal Corporation.

This will not prevent the Corporation from proceeding against the petitioners for the alleged unauthorised construction under Section 400(1) of the Kolkata Municipal Corporation Act, 1980.

Needless to mention that such proceedings shall be concluded as early as possible with due notice upon the petitioners.

Accordingly, **WPA 19221 of 2024** is disposed of.

Urgent photostat certified copy of this order, if applied for, be supplied to the learned advocates for the parties on usual undertakings.

(Kausik Chanda, J.)