

OD - 7

ORDER SHEET

WPO/28/2024

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
ORIGINAL SIDE

BAPPA DAS
VS.
THE KOLKATA MUNICIPAL CORPORATION AND ORS.

BEFORE:
The Hon'ble JUSTICE AMRITA SINHA
Date: January 19, 2024.

Appearance:
Mr. Somnath Gangopadhyay, Adv.
Mr. Sumitava Chakraborty, Adv.
... for the petitioner

Mr. Gurudas Mitra, Adv.
Mr. Gopal Ch. Das, Adv.
... for the KMC.

The Court: Pursuant to the order passed by this Court on 17th January, 2024, learned advocate representing the Corporation has produced the departmental note wherefrom it appears that the intended area of unauthorised construction is approximately 285 square meter.

Notice under Section 401 of the KMC Act, 1980 was issued upon the persons responsible on 16th October, 2023 with intimation to the police on the same date. The file along with demolition sketch plan and infringement statement was placed before the higher authority for information and prudent direction to process the case under suitable sub-Section of Section 400 of the Act.

The reconstruction plan of the roof under Rule 3(2)(e) of the KMC Building Rules 2009, stair and stair-head room under Section 410 of the KMC Act, 1980 is restricted strictly to the plan proposal which was sanctioned by the Corporation. Any construction made beyond the sanctioned plan is unauthorised. The Corporation has invoked the provision of Section 400(8) for demolition of the unauthorised construction.

Learned advocate for the petitioner submits that Section 400(8) can be invoked only if the work of construction is ongoing. The petitioner contended that as the construction work is over, accordingly, the provision of Section 400(8) cannot be invoked.

Section 400(8) lays down that notwithstanding anything contained in this Chapter, if the Mayor-in-Council is of the opinion that immediate action is called for in relation to a building or a work being carried on in contravention of the provisions of this Act, it may, for reasons to be recorded in writing, cause such building or work to be demolished forthwith.

If the wordings of the said Section is paraphrased, the same may be read that immediate action may be taken in relation to a building constructed in contravention of the provisions of the Act, and for reasons to be recorded in writing, the said building may be demolished forthwith. The expression 'or' mentioned in the said provision has to be read in a disjunctive manner and not in the manner as has been submitted by the

learned advocate representing the petitioner. If the submission of the petitioner is to be accepted, then Section 400(8) cannot be invoked in respect of any construction which has been concluded. The same cannot be accepted to be proper interpretation of the said Section as it is evidently clear that the said provision can be invoked both in respect of ongoing constructions and also in respect of constructions which stood concluded. Section 400(8) is an emergent provision and the same may be invoked depending upon the facts and circumstances of a particular case.

The Court is not satisfied with the contention of the petitioner that the construction has been made in accordance with the sanctioned plan.

In view of the above, the Court is not inclined to interfere in the instant writ petition. The same stands dismissed.

After the order is passed in open Court, learned advocate for the petitioner prays for stay of operation of the said order. The prayer for stay made by the petitioner is considered and rejected outright.

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

(AMRITA SINHA, J.)