

OD-6

ORDER SHEET
WPO No.74 of 2024
IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
ORIGINAL SIDE

IQRAMUL HAQUE & ANR.
-Versus-
THE KOLKATA MUNICIPAL CORPORATION & ORS.

BEFORE:
The Hon'ble JUSTICE AMRITA SINHA
Date: 22nd February, 2024.

Appearance:
Mr. Raghunath Chakraborty, Adv.
Mr. Avirup Chatterjee, Adv.
Mr. Rishov Das, Adv.
...for Petitioner.

Mr. Biswajit Mukherjee, Adv.
Ms. Manisha Nath, Adv.
...for KMC.

Mr. D.K. Sengupta, Adv.
Ms. Sweta Saha, Adv.
Ms. Farhin Mustaque, Adv.
...for Respondent No.5.

The Court:- The petitioners claim to be the owners and the persons responsible for carrying on construction work at premises no.1742, Laskarhat. The petitioners claim that they are raising construction at the subject premises in accordance with the plan sanctioned by the Kolkata Municipal Corporation.

The petitioners contend that the notice dated 17.01.2024 under Section 401 of the KMC Act, 1980 has been issued without following the due provision of law.

The petitioners through their learned advocate made representation before the Assessor Collector, Assessment Collection Department of the Corporation seeking withdrawal of the stop work notice and sought opportunity of hearing. It has been submitted that the stop work notice ought to be withdrawn and the petitioners be permitted to proceed with the construction work in accordance with the sanctioned plan.

Learned advocate representing the respondent no.5 submits, upon instruction that, the premises in question is the subject matter of title suit being T. S. No. 1152 of 2016 (Sr. No. 184 of 2019) which is pending consideration before the learned 5th Civil Judge (Senior Division) at Alipore [Gurnit Kaur Patheja Vs. Bilayat Hossain & Ors.] wherein the learned Court was pleased to pass an ad interim order of injunction restraining the defendants, their men, agents, associates and assignees from making any construction or illegally and forcefully occupying and/or changing the nature and character of the suit premises being premises no.851, Laskarhat which was later re-numbered as 1724, Laskarhat.

A separate writ petition has been filed by the respondent no.5 challenging the mutation made in favour of the vendor of the petitioners being the respondent no. 6 herein.

It appears from the submissions made on behalf of both the parties that there are several question of facts which are to be answered prior to withdrawing and/or taking any steps further to the notice issued under Section 401 of the Kolkata Municipal Corporation Act, 1980. A civil suit with an order of injunction is pending consideration before the learned Court. Whether the suit premises and the premises no.1724, Laskarhat in respect of which Section 401 notice has been issued is the same or not is required to be ascertained.

It appears that the petitioners made representation before the Assessor Collector seeking withdrawal of the stop work notice. The Assessor Collector is not the competent authority to take any step in connection with the impugned notice under Section 401, accordingly, it will be open for the petitioners to approach the competent authority seeking withdrawal of the impugned notice. The competent authority of the Corporation, prior to taking any further steps in connection with the impugned notice dated 17.01.2024, shall afford reasonable

opportunity of hearing to all the necessary parties and thereafter take a decision in the matter.

The writ petition stands disposed of.

Affidavit of service filed in Court today is taken on record.

Urgent Photostat certified copy of this order, if applied for, be supplied to the parties upon compliance of all legal formalities.

(AMRITA SINHA, J.)

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