

OD-3

ORDER SHEET  
WPO No.182 of 2024  
IN THE HIGH COURT AT CALCUTTA  
CONSTITUTIONAL WRIT JURISDICTION  
ORIGINAL SIDE

ANUPA SINHA AND ANR.  
VERSUS  
THE KOLKATA MUNICIPAL CORPORATION & ORS.

BEFORE:  
The Hon'ble JUSTICE AMRITA SINHA  
Date: 16<sup>th</sup> April, 2024.

Appearance:

Mr. Abhimanyu Banerjee, Adv.  
Mr. Shivam Adhikary, Adv.  
Mr. Argha Mullick, Adv.  
For the petitioners

Mr. Srijan Nayak, Adv.  
Ms. Debangana Das Nayak, Adv.  
For KMC

Ms. Sipra Mazumdar, Adv.  
Ms. Somashree Dey, Adv.  
For the State.

Mr. P.S. Deb Barman, Adv.  
Mr. Anindya De, Adv.  
Mr. Amit Gupta, Adv.  
Ms. Pratiti Das, Adv.  
For respondent nos. 10 & 11.

The Court:- The matter relates to unauthorized construction at 8, Dehi Entally Road, Ward No.55, Borough-VI of the Kolkata Municipal Corporation. An order of demolition under Section 400(1) of the Kolkata Municipal Corporation Act, 1980 was issued by the Executive Engineer (Civil)/Building/Borough-VI on 15<sup>th</sup> September, 2023 after it was detected that the person responsible constructed by encroaching the mandatory side open

spaces and by construction of one additional floor that is the 4<sup>th</sup> floor in deviation of the sanctioned plan.

The plan was sanctioned for raising construction of G+ 3 storied building. The person responsible constructed an additional floor prior to the complaint of the unauthorized construction being adjudicated by the Executive Engineer. Presently, it appears that another additional floor that is G+5 storied building has been constructed. The same indicates that two additional floors over and above the sanctioned G + 3 stories have been constructed. The mandatory side open spaces have also been encroached at the time of raising construction.

The person responsible being aggrieved by the demolition order passed by the Executive Engineer preferred a statutory appeal being B. T. Appeal No.194 of 2023 which is pending adjudication before the Tribunal.

It appears that when the order of demolition was passed, only one additional floor was in existence. During pendency of the statutory appeal before the Tribunal, a further additional floor has been constructed. There is no order in connection with the topmost additional floor which has been constructed and as per the petitioners' submission further construction is going on.

Learned advocate representing the private respondent submits that as the statutory appeal is pending consideration before the appellate forum, the Court would not enter into the issue and further steps ought to be taken only after the appeal is disposed of by the Tribunal.

Learned advocate representing the private respondent submits that the order of demolition ought not to be implemented at this stage because there may be a chance of regularization of the unauthorized construction that has been made.

The Court is absolutely not agreeable to the submission that has been made. According to the provision of law, construction can be made only after obtaining prior sanction. Raising construction unauthorisedly without sanction and, thereafter, approaching the authority for post facto sanction of the unauthorized construction, is not contemplated in law. Regularization can be made in respect of the structures which are irregular. If there is absolutely no sanction of the structure that has been constructed, the same cannot be the subject matter of regularization and more so two additional floors can never be treated as minor construction.

Fact remains that there is no order in connection with the topmost floor that has been constructed illegally. The same cannot be adjudicated by the appellate forum. If 5<sup>th</sup> floor of the structure has been held to be unauthorized, 6<sup>th</sup> floor will certainly be an unauthorized one.

The concerned Executive Engineer of the Corporation is directed to take steps in accordance with law to deal with the additional floor that has been constructed unauthorisedly.

As the provision of Section 400(7) has been placed before this Court and it has been submitted that the order of demolition may be executed after the statutory appeal is decided, the Court is not inclined to pass immediate

order for demolition of the unauthorized construction. Municipal Building Tribunal is directed to decide the appeal being BT Appeal no. 194 of 2023 at the earliest, but positively by 31<sup>st</sup> July, 2024.

Officer-in-Charge, Entally Police Station is directed to keep strict vigil over the property and ensure that construction in any manner whatsoever is not carried out at the subject premises.

Owner(s)/the person(s) responsible for making construction/the developers or promoters of the subject construction are restrained from selling/transferring/alienating/ creating third party rights in the subject construction until further order of the Court.

The writ petition stands disposed of.

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

(AMRITA SINHA, J.)