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ORDER SHEET
WPO No.193 of 2024
IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
ORIGINAL SIDE

ABARNA DUTTA & ANR.
VERSUS
KOLKATA MUNICIPAL CORPORATION & ORS.

BEFORE:
The Hon'ble JUSTICE AMRITA SINHA
Date: 5th April, 2024.

Appearance:
Mr. Rupak Ghosh, Adv.
Mr. Jayanta Sengupta, Adv.
Mr. Ayan Mitra, Adv.
...for petitioners.

Mr. Gurudas Mitra, Adv.
Ms. Manisha Nath, Adv.
...for Kolkata Municipal Corporation

Sk. Sujauddin, Adv.
...for respondent no.9.

Mr. Biswaroop Bhattacharya, Adv.
Mr. Ayan Kumar Boral, Adv.
...for respondent nos.7&8.

Mr. Sumitava Chakraborty, Adv.
Mr. Subhadip Basu, Adv.
...for respondent nos.10,11&12.

The Court:- Petitioners complain of illegal and unauthorised construction at 12, Jatindra Mohan Avenue, Ward No.17, Borough II under the jurisdiction of Kolkata Municipal Corporation.

Submission is that 1060 sq.ft. in the top floor has been constructed over and above the sanctioned plan. Complaint lodged against such unauthorised construction is alleged to be kept pending.

Learned advocate representing the respondent nos.7 and 8 being the developer of the subject property denies the submission made by the petitioners.

It has been submitted that an application has been filed before the Corporation seeking regularisation of the construction that has been made. It has further been submitted that the construction in question is not a new one and is in existence for quite some time.

Learned advocate representing the respondent nos.10, 11 and 12, i.e., the occupants of the portion constructed unauthorisedly submits, upon instructions that, the developer had given an impression to the said respondents that relying upon the Circular of the Kolkata Municipal Corporation steps will be taken to get the additional construction regularised.

The area of the unauthorised construction as submitted by the petitioners is disputed by the private respondents.

Learned advocate representing the Corporation has obtained instruction from the Assistant Engineer [Civil]/Building Department signed on 28.03.2024.

It appears therefrom that this is a case of unauthorised construction beyond the sanction plan of [B+G+V] storied residential building [principal occupancy] sanctioned under Section 393 of Kolkata Municipal Corporation Act, 1980, subsequently regularised under Rule 26[2a] of the Kolkata Municipal Corporation Building Rules, 2009. On receiving a written complaint departmental inspection was conducted and it was found that part of the existing roof has been covered by RCC slab supporting by RCC columns, beams and brick walls to form one additional storey [partly]. The same is beyond the approved plan. The height of the building has been raised to 22.45m [approximately] instead of approved 19.40 m. Area of unauthorised construction at the 6th floor is 155.446 sq.m. Six number of car parking at the ground floor has been covered and the first floor is currently been used for commercial purpose instead of sanctioned residential use.

The infringement statement annexed to the said report clearly mentions that the mandatory side open spaces on all four sides of the structure have been infringed. Required number of car parking has also been infringed. Width of the clear driveway on open space has been infringed. The structural

design and the quality of the materials used are unknown. In fine, Rules 62, 78, 80, 133 and 134 of the Building Rules have been found to be infringed.

As it appears from the instruction forwarded by the engineers that unauthorised construction has been detected and there has been infringement of the Building Rules, accordingly, the Executive Engineer is directed to deal with such unauthorised construction in accordance with law at the earliest, but positively within a period of four months from the date of communication of this order.

Writ Petition stands disposed of.

Report filed by the engineer be retained with the record.

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

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

(AMRITA SINHA, J.)