

OD-7

ORDER SHEET
WPO No.201 of 2024
IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
ORIGINAL SIDE

KAUSHIK GHOSH
-Versus-
THE KOLKATA MUNICIPAL CORPORATION & ORS.

BEFORE:
The Hon'ble JUSTICE AMRITA SINHA
Date: 12th March, 2024.

Appearance:
Mr. Prasenjit Mukherjee, Adv.
Md. Shakir, Adv.
...for Petitioner.

Mr. Atish Kumar Biswas, Adv.
Mrs. Susmita Chattterjee, Adv.
...for KMC.

Mr. Debjit Mukherjee, Adv.
Mr. Kaustav Bhattacharjee, Adv.
...for the State.

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

The matter relates to the unauthorised construction at B/6A/H/7, Kebab Krishna Sur Street, Ward No.09, Borough -I of the Kolkata Municipal Corporation.

On detection of unauthorised construction, a notice under Section 401 of the Kolkata Municipal Corporation Act, 1980 has been issued to the person responsible on 30.11.2023 requiring the person responsible to forthwith stop all construction works including addition or alteration as the same was being carried on without any sanction.

Petitioner submits that the building in question is nearly sixty years old. Mere repairing works was going on and no new construction has been made.

It has been submitted that no notice of any proceeding to deal with the unauthorised construction has been served upon the petitioner. Petitioner is not aware of any order of demolition that is being implemented. The Corporation without any notice and without any intimation has started the work of demolition. Prayer has been made to restrain the Corporation from proceeding with the demolition work.

Learned advocate representing the Corporation relies on a report signed by the engineers of the Corporation on 11.03.2024.

The report mentions that the department inspected the premises on 30.11.2023 and noticed that construction of R.C.C. slab in the first floor roof level supported by brick wall and some column over an existing single storied building was going on without taking any permission or sanction from the Corporation.

To stop progress of unauthorised construction, notice under Section 401 of the Kolkata Municipal Corporation Act, 1980 was issued upon the person responsible with a copy to Shyampukur Police Station, Joint Commissioner of Police [HQ] and Deputy Commissioner of Police, NNSD.

The area of the unauthorised construction was approximately 36.85 sq. meter which was going on in the first floor roof level. The case file along with the demolition sketch plan and infringement statement was placed before the higher authority and the superior authority invoked provision of Section 400[8] of the Kolkata Municipal Corporation Act, 1980.

Some portion of the unauthorised structure has already been demolished on 07.03.2024 with the help of Shyampukur Police Station and the next date for demolition has been scheduled on 15.03.2024 for demolishing the remaining portion of the unauthorised construction.

The submission of the petitioner is that no notice was issued prior to the demolition work being conducted falls flat in view of the stand of the Corporation invoking Section 400[8] of the Act. There is no requirement of issuance of any prior notice or granting any opportunity of hearing prior to the demolition being conducted in accordance with Section 400[8] of the Act. The petitioner ought to have obtained prior sanction before constructing the RCC slab and column. The said construction being made without any prior sanction has been held to be unauthorized and steps have been taken for demolition of the same.

The Corporation detected the unauthorised construction on 30.11.2023 and immediately took steps on emergency basis to invoke Section 400[8] of the Act and partly demolished the unauthorised construction on 07.03.2024 and the balance will be demolished on 15.03.2024. It does not appear that there is any error on the part of the Corporation in invoking the emergency provision.

The Court is not inclined to exercise jurisdiction in the matter.

The writ petition fails and is hereby dismissed.

Instruction forwarded by the Officer-in-Charge, Shyampukur Police Station signed on 10.03.2024 and the instruction forwarded by the engineer of the Corporation signed 11.03.2024 be retained with the 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.)

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