

ORDER HEET

WPO No.216 of 2024
IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
ORIGINAL SIDE

BIMAL JYOTI DHAR
-Versus-
KOLKATA MUNICIPAL CORPORATION & ORS.

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

Appearance:
Mr. Krishnendu Bera, Adv.
Ms. Debolina Chakraborty, Adv.
Mr. Swapnamoy Sarkar, Adv.
...for Petitioner.

Mr. Gurudas Mitra, Adv.
Ms. Parna Sengupta, Adv.
...for KMC

The Court:- The petitioner complains that an order of demolition has been passed without giving any notice and without giving any opportunity to the petitioner to defend the demolition proceeding. No communication from the end of the Corporation has been made with the petitioner who is running shop room from the ground floor of the premises at 19A, Maharaja Tagore Road, ward No.92, Borough-X, Kolkata-700031 under the jurisdiction of Kolkata Municipal Corporation.

It is the contention of the petitioner that an aggrieved person has a right to prefer appeal against the order of demolition. As the order of demolition has not been made known or communicated to the petitioner, he is not in a position to approach the statutory appellate forum. Prayer has been made for setting aside the demolition order or alternatively to stay the same so that the petitioner may approach the appellate forum.

Learned advocate representing the Corporation submits, upon instruction that, provision of Section 400[8] of the Kolkata Municipal Corporation Act, 1980 was invoked to demolish the absolute unauthorized construction made at the

subject premises. The petitioner has illegally converted the car parking space into a shop room and using the same for commercial purpose.

Though the demolition proceeding was scheduled on 11.03.2024 but the same could not be implemented as the petitioner kept the structure under lock and key.

A notice under Section 401 of the Kolkata Municipal Corporation Act, 1980 was issued upon the person responsible on 11.10.2023 with intimation to the Lake Police Station on 12.10.2023.

I have perused the deed by which the petitioner purchased the said property. The deed clearly mentions that the car parking space measuring about 150 sq. ft. covered area in the ground floor of northern side of G+3 storied residential building was purchased by him. The petitioner relies upon the inspection book in support of his submission that he was running a shop from the subject structure.

The fact that the petitioner is paying tax in respect of an unauthorized construction does not imply that the structure has been legalized. Section 400(2) of the Act makes it clear that an order of demolition may be passed notwithstanding the fact that assessment of such building has been made for levy of property tax.

The very purpose of sanctioning a building plan with car parking space is frustrated if the said space is converted for any other use. The specifications of a car parking space are different from the specifications required for construction of either a room or a shop room. The car parking space cannot be converted to a shop room and used for commercial purpose. The conduct of the petitioner is contrary to the Act and the corresponding Rules.

In view of the above, the Court is not inclined to exercise jurisdiction in the matter.

The Corporation is directed to immediately execute the order of demolition that is pending implementation.

The writ petition fails and is hereby dismissed.

The Officer-in-Charge, Lake Police Station is directed to render all necessary assistance to the men and agents of the Corporation at the time of execution of the order of demolition. Officer-in-Charge, Lake Police Station is also directed to ensure that the shop room does not run from the said premises as the construction in question is an unauthorized one.

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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