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ORDER SHEET

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
ORIGINAL SIDE

WPO No.257 of 2024

ASOKE KUMAR DATTA
VS.
THE STATE OF WEST BENGAL & ORS.
With
WPA No.7373 of 2024

SANSKARI HOUSE & ANR.
VS.
THE STATE OF WEST BENGAL & ORS.

BEFORE:

The Hon'ble JUSTICE AMRITA SINHA

Date: 18th April, 2024.

Appearance:

Mr. Sutanu Chakrabarti, Adv.

Mr. Anirban Ray, Adv.

... for the petitioner in WPO 257/2024 &
for respondent no.8 in WPA/7373/2024.

Mr. Alak Kr. Ghosh, Adv.

Ms. Manisha Nath, Adv.

... for K.M.C.

Mr. Ramkrishna Bhattacharya, Adv.

Mr. Biswajit Roy, Adv.

Mr. Koushik Choudhury, Adv.

Ms. Bushra Khatun, Adv.

Ms. Kankana Bhattacharya, Adv.

..for Respondent no.11 in WPO 257/2024 &
for petitioner in WPA/7373/2024.

Mr. Debangshu Dinda, Adv.

..for State.

The Court :- The writ petitioner in the Appellate Side writ petition has filed the writ petition challenging the order passed by the Director General, Building, KMC on 25.01.2024 directing demolition of the construction made at premises no. 80/3, Mahatma Gandhi Road, Ward no.40, Borough V of the Kolkata Municipal Corporation as the construction has been found to be

made in gross violation of the sanctioned plan. The Director General took note of the fact that there was an existing four storied building which has been totally demolished and construction work started from the foundation. The same is in deviation of the sanction/construction plan under Rule 3(2)(e) of the Kolkata Municipal Corporation Building Rules, 2009 and under Section 410 of the Kolkata Municipal Corporation Act, 1980.

Presently, there is a two storied unauthorized RCC framed structure. Stop work notice under Section 401 of the Kolkata Municipal Corporation Act, 1980 was served upon the person responsible for making construction with intimation to Amherst Street Police Station.

The petitioner submits that the building in question was an old and dilapidated one and at the time of making construction, in terms of the sanctioned plan, the whole building collapsed and, accordingly, a new building had to be constructed thereat.

It has been submitted that prayer has been made before the Corporation seeking regularization of the construction that has been made.

It has been submitted that a civil suit is pending in between the petitioner and the private respondent nos. 8 & 9.

The writ petition in the Original Side has been filed by Asoke Kumar Datta praying for implementation of the same order of demolition dated 25.01.2024 passed by the Director General, Building.

It has been submitted that the old and existing structure was deliberately pulled down to construct the new building thereat. It has been submitted that the unauthorized construction is liable to be demolished in terms of the order passed by the Director General, Building.

I have heard both the parties and perused the materials on record. From the documents annexed to the writ petition, it appears that the Director General of Building considered the matter in compliance of the direction passed by this Court on 4th September, 2023 in WPO 1536 of 2023 [Dr. Asoke Kumar Datta Vs. The State of West Bengal & Ors.]. All the parties were given opportunity of hearing for production of necessary documents in support of their respective stand.

It was detected that relying on a reconstruction plan under Rule 3(2)(e) of the Building Rules, the person responsible demolished the old existing structure and constructed a new building thereat. The building is presently two storied RCC framed structure.

According to Rule 3(2)(e) of the Building Rules, 2009 minor repairs and re-flooring of existing damaged roof without changing the character and dimension of the roof may be done. The character of the damaged roof may be allowed to be changed and its reconstruction permitted by writing of the Municipal Commissioner on such terms as he may consider fit upon application being made to him on payment of the requisite fees and on submission of structural stability certificate. In the present case the existing structure has been brought down without any permission of the Commissioner.

Assuming but not admitting that the old and existing structure collapsed during the repairing work being done, the person responsible ought to have brought the said fact to the notice of the Corporation and thereafter proceed with the construction work after obtaining proper sanction. Without proper sanction absolute new construction cannot be

made. Relying upon provision of Rule 3(2)(e) of the Building Rules, 2009 new construction cannot be permitted to be made.

The person responsible with permission under Rule 3(2)(e) could not have, under any circumstances, demolished the existing structure and made new construction without obtaining proper sanction from the Corporation.

The submission of the petitioner that in connection with the subject structure civil suit is pending consideration in between the parties will be of no consequence as no order can be passed in respect of any structure which has been constructed unauthorizedly.

As regards the submission of the petitioner in the Appellate Side that an application for regularization is pending consideration and, as such, the order of demolition ought not to be executed at this stage is not acceptable by the Court. Regularization can be made only in respect of any structure constructed irregularly and not of any structure constructed without any sanctioned plan. An irregular construction would mean a construction made with some sort of sanction but any construction made without any sanction is an absolute illegal and unauthorized construction. The entire two storied RCC framed structure constructed without any sanctioned plan is an illegal construction which cannot be permitted to be regularized.

In view of the above, the writ petition in the Appellate side stands dismissed. The writ petition in the Original Side stands allowed directing the Executive Engineer of the Kolkata Municipal Corporation to proceed with the work of demolition of the unauthorized structure at the earliest.

Officer-in-Charge, Amherst Street Police Station is directed to ensure that construction in any manner whatsoever is not carried out at the subject premises.

The police is also directed to render all necessary help and assistance to the men and agents of the Kolkata Municipal Corporation at the time of demolition of the unauthorized construction.

Affidavit of service filed in the Appellate and the Original Side are 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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