

OD-5

WPO No.297 of 2024
IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
ORIGINAL SIDE

SOUMITRA CHATTERJEE
VERSUS
THE KOLKATA MUNICIPAL CORPORATION & ORS.

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

Appearance:
Mr. Avirup Chatterjee, Adv.
Mr. Rishov Das, Adv.
..for Petitioner.

Mr. Gopal Chandra Das, Adv.
Ms. Manisha Nath, Adv.
...for KMC

The Court:- The matter relates to premises no. 61A, Bata Krishna Paul Avenue, Post Office- Hatkhola, Ward No.19, Borough-II of the Kolkata Municipal Corporation.

On a complaint of unauthorized construction at the behest of the private respondent, M/S. Munna Associates proprietor Mr. Munna Mondal, the Corporation inspected the site and on detection of unauthorized construction served stop work notice with intimation to Jorabagan Police Station on 20th April, 2023. The site was further inspected on 29th September, 2023 and it was found that the person responsible resumed construction work with RCC slab casting in the 5th floor defying stop work notice. F.I.R. under Section 401A of the Kolkata Municipal Corporation Act, 1980 was lodged.

The Corporation invoked provision under Section 400(8) of the Act and started demolition work with the assistance of the local police. At the time of conducting demolition, an order of injunction passed by the learned Court in

Title Suit No.57 of 2024 was produced. The Corporation on receipt of the order copy immediately stopped the demolition work.

The petitioner has annexed copy of the order dated 22nd December, 2023 passed in Title Suit No.2613 of 2023 (M/S. Munna Associates Vs. Sri Tapas Mukherjee). On a perusal of the said order, it does not appear that the issue of unauthorized construction was before the learned Court. In the present case, specific averment is of unauthorized construction.

It is settled law that in respect of unauthorized construction, the order of injunction cannot be passed to hold on to a structure which has been constructed unauthorizedly without any sanctioned plan. In the instant case, it appears that the construction is going on without any sanctioned plan. Despite stop work notice being issued, the person concerned continued with further unauthorized construction and is presently relying upon the order of the Court not to proceed with the order of demolition.

Once unauthorized construction is detected, the same is liable to be dealt with in accordance with law. The Corporation has already invoked provision under section 400(8) of the Act and proceeded with the demolition work. The Executive Engineer of the Building Department, Borough-II is directed to continue with the demolition of the unauthorized construction till the entire unauthorized construction is brought down and to conclude the same at the earliest.

Officer-in-Charge, Jorabagan Police Station is directed to render all necessary help and assistance to the men and agents of the Corporation at the time of execution of the order of the demolition, if sought for.

Be it recorded that the writ petition was sought to be served upon the private respondent at the address mentioned in the cause title of the Title

Suit mentioned hereinabove filed at the behest of the private respondent before the learned Civil Court but the postal endorsement shows that the postal envelope has been returned with the remark 'Out of Station, hence left' and 'addressee moved'

The writ petition stands disposed of.

Report of the Executive Engineer (C/Building), Borough II of the Corporation dated 16.04.2024 be retained with the records.

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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