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ORDER SHEET

WPO No.390 of 2024
IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
ORIGINAL SIDE

BISWANATH SINGH
VS
THE KOLKATA MUNICIPAL CORPORATION & ORS.

BEFORE:

The Hon'ble JUSTICE AMRITA SINHA

Date: 30th April, 2024.

Appearance:

Mr. Prosenjit Mukherjee , Adv.

Md. Shakir, Adv.

Mr. Jahangir Hossain, Adv.

...For Petitioner.

Mr. Achintya Kr. Banerjee, Adv.

Ms. Manisha Nath, Adv.

...For KMC

The Court:- The petitioner is aggrieved by the notice issued under Sections 544 & 546 of the Kolkata Municipal Corporation Act, 1980 dated 12.04.2024 fixing today, i.e., 30.04.2024 as the date when the men and agents of the Corporation will enter the premises no.11A, Gouri Shankar Ghoshal Lane, Ward No.30, Borough-III of the Corporation for demolishing the unauthorized structure in terms of the order passed by the Special Officer [Building] on 9th August, 2023 under Section 400(1) of the Kolkata Municipal Corporation Act, 1980.

On a perusal of the order of demolition passed under Section 400(1) of the Kolkata Municipal Corporation Act, 1980, it appears that the same was passed in compliance of the direction passed by the Hon'ble Court. The impugned order

of demolition clearly mentions the infringement statement of the building. There is unauthorized construction of 332.726 square meter.

The petitioner's name is recorded as a lessee of the subject premises. His allegation is that no opportunity of hearing was granted to the petitioner. It has been submitted that there has been violation of principle of natural justice in not affording opportunity of hearing to the petitioner. The petitioner has already preferred an appeal challenging the order passed by the Special Officer before the statutory appellate forum which is pending consideration.

Learned advocate representing the Corporation submits that according to the provisions of the Act, the person responsible for making construction was served notice of the proceeding under Section 400(1) of the Act. The parties duly appeared at the time of hearing. It has been submitted that there is no scope for granting any opportunity of hearing to the lessee or an occupier of the unauthorized construction.

Reliance has been placed on the judgment delivered by this Court in the matter of ***Sanjay Mehta & Ors. Vs. Kolkata Municipal Corporation & Ors.*** reported in ***(2006)2 CLJ (Cal.) 574*** wherein it has been held that an occupier of unauthorized construction cannot oppose the demolition of unauthorized construction. It is only the owner, occupier or any other person responsible for construction who is entitled to a notice under Section 400(1) of the Act and has a right of participation in the said proceeding. Right of participation in the proceeding will not be applicable in respect of any person not responsible for making the unauthorised construction. 'Any person' mentioned in Section 400(1) is restricted only to the person responsible for making construction.

In the instant case the petitioner does not claim responsibility of the construction that has been made. The petitioner has already preferred an appeal before the statutory appellate forum. It will be open for the petitioner to approach the said forum for relief. The Court is not inclined to interfere in the present writ petition. The same stands disposed of.

Affidavit of service filed in Court today is 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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