

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
ORIGINAL SIDE

WPO 478 of 2024
MURSHID ALAM & OTHERS
VERSUS
THE KOLKATA MUNICIPAL CORPORATION & OTHERS

BEFORE:
THE HON'BLE JUSTICE AMRITA SINHA
Date: 17th May 2024

Appearance:

Mr. Dhriaj Trivedi, Adv.
Md. Shakil, Adv.
Mr. Bikash Kr. Singh, Adv.
Mr. Sunil Gupta, Adv.
... for the petitioners

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

Mr. Debjit Mukherjee, Adv.
Ms. Dipanwita Ganguly, Adv.
... for the State of WB.

The Court: The matter relates to demolition of unauthorised construction at B/4/1/H/3, Nawab Abdul Latif Street, Kolkata 700016 under borough VI of the Kolkata Municipal Corporation. The Corporation, in compliance of the direction passed by this Court, has taken steps to demolish the same.

Four of the tenants of the subject premises are here before this Court challenging the demolition. It has been submitted that the tenants were not made aware of the order of demolition that had been passed. It has been submitted that the construction in question is in existence for nearly ten years and there is no immediate threat of the structure crumbling down.

No notice under Section 412 of the Kolkata Municipal Corporation Act, 1980 has been issued upon the petitioners.

Reliance has been placed on the judgment passed by this Court in the matter of **Saif Impex Pvt. Ltd. & Anr. v. Kolkata Municipal Corporation & Ors.** reported in **(2014) 3 Cal LT 706** wherein the Court in the facts and circumstances of the said case observed that the Municipal Authority need not resort to the provision under Section 400(8) of the Act particularly because the petitioners' application for regularization of the unauthorized construction was awaiting consideration before the Municipal Authority.

Reliance has also been placed on an unreported order passed by a co-ordinate Bench of this Court on 25th May 2023 in **WPO/1225/2023** in the matter of **M/s. Multibuild Properties Pvt. Ltd. v. The Kolkata Municipal Corporation & Ors.**, wherein the Court inter alia was of the opinion that before service of notice under Section 412(2) of the KMC Act, 1980, it is the duty of the Municipal Commissioner to serve notice to the owner/ occupier of the building to vacate the building forthwith. The Court held that action of forcible eviction can only be adopted under the aforesaid provision when the owner/occupier of the building refuses to vacate the premises.

Reliance has also been placed on the third proviso to Section 400(1) of the Act, wherein there is provision for regularisation of minor unauthorised erection.

Prayer has been made to set aside and cancel the impugned notice dated 15th May, 2024 issued under Sections 554 and 546 of the Act fixing 18th May, 2024 as the date for demolition of the unauthorized construction.

Learned advocate representing the Kolkata Municipal Corporation produces a report signed by the Executive Engineer of the Corporation on 17th May 2024 wherefrom it appears that the Corporation invoked the provision under Section 400 (8) of the Act for demolition of the unauthorised construction. The demolition was initially scheduled on 4th July 2018. Partial demolition was done, but due to strong resistance from the occupiers of the building, the demolition could not be completed.

To comply the direction passed by the Court on 25th April 2024, joint inspection of the scheduled property was conducted today (17.05.2024) with the officials of Water Supply, Sewerage & Drainage and Engineering (Civil) Departments with prior intimation to the parties, but because of strong agitation from the occupiers of the building, inspection could not be possible.

Copy of the order dated 12th July, 2018 passed by a co-ordinate Bench of this Court in WP/26112(w)/2014, CPAN/1777/2015, CAN/288/2018 (Miss Shagufta Sulaiman v. Sajid & Ors.), has been produced before this Court, wherefrom it appears that the learned advocate representing the Corporation submitted before the Court that the Corporation intends to proceed with the demolition work and in view of the aforesaid assurance given before the Court, the contempt application stood disposed of.

Though the contempt application stood disposed of but, for reasons best known to the Corporation, the order passed by the Court was not complied with. The complainant was compelled to approach this Court all over again for implementation of the order passed by the Court. The aforesaid conduct of the respondent authorities in not complying the order, despite giving assurance to the Court, amounts to contempt. Had the authorities faced any difficulty in complying the Court's order, the same ought to have been brought to the notice of the Court.

The order of the Court is meant to be complied with in the right earnest. The same is not meant only for preservation in the file of the authority.

It appears that the petitioners, claiming to be the tenants of the subject structure, are taking up the cause of the landlords. The owner(s) of the structure has not taken any steps to challenge the order of demolition which has attained finality by now. The Court on the earlier occasion ordered demolition which is presently required to be complied with. The owner(s) or any person aggrieved by the order of demolition had enough time to challenge the same before the competent forum. The same has not been done. At this stage, there is hardly any scope to stall the work of demolition. Any action to prevent the demolition work from proceeding will amount to interference in the administration of justice.

Provision of Section 400(8) of the Act is invoked as a matter of emergency. The engineers of the Corporation thought it fit to invoke the

emergent provision, but because of strong resistance from the occupiers, the order of demolition could not be acted upon.

The petitioners rely upon the third proviso to Section 400(1) of the Act. The said provision relates to regularisation of only minor unauthorised erection. In the instant case, three additional floors have been constructed without any sanction. The same cannot, under any stretch of imagination, be treated as minor unauthorised erection. The persons responsible, in brazen violation of the provisions of the Act, went on with the construction and are now trying their level best to hold on to the same. Any sympathy/leniency shown or any order passed to protect unauthorized construction will be counter-productive and will act as a premium to the builders to raise constructions in violation of the building Rules.

The judgment in the matter of M/s. Multibuild Properties (supra) relied upon by the petitioners relates to order passed under Section 400(1) of the Act. The provisions of Section 400(1) and 400(8) are completely different and they are invoked for diverse reasons. The provision in Section 400(1) provides grant of prior notice, whereas a proceeding under Section 400(8) does not require any prior notice as it is an emergent provision. Approval to proceed under Section 400(8) is given by the top most authority upon recommendation of the Mayor-in-Council. In the instant case emergent provision was invoked to deal with the unauthorized construction and, accordingly, the ratio laid down in M/s. Multibuild Properties (supra) will not apply in the present case.

In Saif Impex Pvt. Ltd. (supra), the Court directed the respondent authorities to proceed under Section 400(1) of the Act instead of proceeding under Section 400(8) of the Act. In the present case, there is no order directing the proceeding under Section 400(8) to be transposed to proceeding under Section 400(1) of the Act. Accordingly, the ratio laid down in Saif Impex Pvt. Ltd. (supra) cannot be made applicable in the facts and circumstances of the instant case.

In view of the discussions made herein above, there is no scope to interfere in the instant writ petition.

Learned advocates representing the Corporation and the police have submitted that despite the election programme being on, police personnel have been arranged to execute the order of demolition.

The concerned Deputy Commissioner of Police through the Officer-in-Charge, Park Street police station is directed to deploy adequate police personnel to vacate the portions constructed unauthorizedly so that the same may be demolished. The occupiers of the unauthorizedly constructed portions are restrained from interfering with the process of demolition. The demolition should continue on day to day basis till the entire unauthorized construction, both internal and external, is brought down.

The writ petition fails and is hereby dismissed. No costs.

List the matter on 18th June, 2024 for recording compliance.

Urgent certified photocopy of this order, if applied for, be supplied to the parties expeditiously on compliance of usual legal formalities.

[AMRITA SINHA, J.]

S. Kumar