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ORDER SHEET

APOT/227/2024
IA NO: GA/1/2024

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
ORIGINAL SIDE

MURSHID ALAM AND ORS.
VS
THE KOLKATA MUNICIPAL CORPORATION AND ORS.

BEFORE:
The Hon'ble JUSTICE JOYMALYA BAGCHI
And
The Hon'ble JUSTICE GAURANG KANTH
Date : 13th June, 2024.

Appearance:
Mr. Dhiraj Trivedi
Mr. Bikash Kumar Singh
Mr. S. Gupta
Ms. Swapna Jha
...for the appellants

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

Mr. Debjit Mukherjee
Ms. Dipanwita Ganguly
...for State

The Court: Appellants are tenants in a building where three floors were constructed unauthorisedly. Order of demolition passed in 2015 was not challenged and has become final and binding. At this belated stage, the appellants have filed the writ petition challenging the demolition order. The challenge is founded on the premise an application for regularisation is

pending and the engineer's report shows structure is stable. This did not find favour with the learned Single Judge and the petition came to be dismissed.

Mr. Trivedi for the appellants argues that the demolition be kept in abeyance till the regularisation application is disposed of. He also submits the demolition order having not been carried out since 2015, its immediate implementation is not necessary.

We are unable to accede to his prayer. This Court notes that a G+5 building has been constructed on a site where the sanctioned plan permitted a G+2 structure. Admittedly, three floors have been unauthorisedly constructed. Such gross deviation from sanctioned plan cannot fall within the category of 'minor unauthorised work' referred to in the proviso to Section 400(1) of the KMC Act or amenable to regularisation under the building rules.

It may not be out of place to note the unauthorised construction was brought to the notice of the Court by a neighbour and pursuant to directions of the Court, demolition order came to be passed which has become final.

Reliance has been placed on *Saif Impex Pvt. Ltd. & Anr. vs. Kolkata Municipal Corporation & Ors.*¹ In the report, the learned Single Judge (as His Lordship then was) was pleased to direct the municipal authorities to resort to Section 400(1) instead of Section 400(8) of the KMC Act as revised plan for regularising this floor construction was awaiting consideration.

In the present case, we note that the order for demolition had been passed in 2015 and had not been challenged. At this belated stage, there is no

¹ 2014 SCC OnLine Cal 16044

scope to reopen the issue on the specious plea of regularisation of three additional floors which by no stretch of imagination can be countenanced under the relevant building rules.

Finally, Mr. Trivedi made a fervent plea to take into consideration the plight of the appellants who were occupying the unauthorised building. Taking note of such humanitarian plea, we called upon the appellants to give an undertaking to vacate the premises within a month. They did not respond to such plea which exposes their insidious approach to resurrect a stale issue and raise futile opposition to the demolition proceeding.

Appeal is accordingly dismissed.

(GAURANG KANTH, J.)

(JOYMALYA BAGCHI, J.)