

M/L 38
01.12.2025
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Ct.3.

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

WPA 2492 of 2024

Smt. Durgarani Modak & Anr.
Versus
The State of West Bengal & Ors.

Mr. Amitabha Ghosh
... For the petitioners.

Mrs. Kakali Samajpaty
Mrs. Kakali Naskar
... For the State.

Mr. Dwijadas Chakraborty
Ms. Pushali Banerjee
... For KMC

Mr. Aditya Chakraborty
Mr. Amar Nath Agarwal
... For the respondent nos.9 and 10.

1. Affidavit of service filed in Court is taken on record.
2. The instant writ petition has been filed complaining failure on the part of the municipal authorities to take steps to arrest unauthorized and illegal construction being carried out by the respondent nos. 9 and 10.
3. Learned advocate for the petitioners has drawn attention of this Court to the undertaking given by the respondent nos. 9 and 10 that the construction that would come up will not interfere with free flow of air and light and not encroach any part of the petitioners' property. Notwithstanding the aforesaid when the

construction came up the same not only interfered with the petitioners free flow of air and light but also encroached the petitioners' property.

4. The respondent nos. 9 and 10 are represented. Learned advocate representing the respondent nos. 9 and 10 has placed before this Court an order passed by the Special Officer,(Building), dated 14th March, 2024 in connection with the demolition proceedings issued under Section 400(1) and 416 concerning premises no. 51/1A , Beniatola Street, Ward – 19 Borough – II in Demolition Case No. 015-D/Br-II/23-24.

5. From the aforesaid order it would transpire that the person responsible had applied for reconstruction of the roof of the old two storied building which was 150 years old. The walls and roof had collapsed at the time of reconstruction work. The person responsible had erected the structure with RCC columns, beams and slab for structural stability. Regularization of the structure was prayed. The order also notes that there is a complaint by the owner of the rear side building which was previously part of the structure of building of the person responsible. The order further records that the person responsible's area of land is 95.132 sqm as per the deed. Unfortunately, the available land is only 43.152 sqm. Frontage of the plot is only 6.35 m. and there is an entrance passage for 51/1A, Beniatola Street at west side which was previously a room. Considering the above, the Special Officer (Building) had passed the following order:-

Part-A

To remove the slab over the passage for entry of premises 51/1A, Beniatola Street within a period of 30 days from the date of communication of this order failing which action will be taken by the department.

Part-B

After compliance of part-A , the two storied structure total area of 86.304 sqm. may be allowed to retain on payment of fees u/s 400(1) to be paid within 30 days from the date of communication of this order

D/sketh will be part and parcel of order

Any person aggrieved by this order u/s 400(1) may be appeal against this order to Municipal Building Tribunal within stipulated time in accordance with the provisions of KMC Act, 1980.

6. Learned advocate for the municipal authorities is represented. Learned advocate representing the respondent nos. 9 and 10 would, however, submit that the aforesaid order has already been complied with and the structure is now as per sanctioned building plan which has been affirmed by the Mayor-in-Council on 7th April, 2025.

7. Having heard the learned advocates for the parties, the merits of the case and considering the peculiar facts of this case and noting that the reconstruction has been necessitated in a 150 years old

building, I am of the view that no interference is called. The writ petition is disposed of accordingly.

8. The order shall not interfere with the other rights of the parties, if any, to agitate the same before the appropriate forum if so advised.

Urgent photostat certified copy of this order, if applied for be given to the parties upon compliance with the requisite formalities.

(Raja Basu Chowdhury, J.)