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ORDER SHEET
IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
ORIGINAL SIDE

WPO/743/2024
PAYEL PAUL ADHIKARY
VS

STATE OF WEST BENGAL AND ORS.

BEFORE:

The Hon'ble JUSTICE TIRTHANKAR GHOSH

Date: 13th February, 2025.

Appearance:

Mr. Tapan Dutta, Adv.

...for the Petitioner

Mr. Malay Krishna De, Adv.

Mrs. Kakali Naskar, Adv.

...for the State.

Mr. Vimal Kr. Shahi, Adv.

Ms. Manisha Nath, Adv.

...for KMC.

The Court : Learned Advocate for the KMC has submitted a report.

The report has been prepared by the S.A.E (C)/Building, A.E (C)/ Building and E.E (C)/ Building/ Borough- IV & V.

The report primarily reflects that the KMC authorities withdrew the Stop-Work notice under Section 401 dated 06.02.2023 subsequent to the initial notice having been issued and the same was done on or about 03.03.2023. According to the KMC authorities, during inspection, they have found certain internal works to be under construction which is quoted from the report as follows;

“During inspection it was found that the person responsible constructed internal partition walls and other repairing works at the existing structure (i.e. tiles work, plastering, false ceiling, putting on the walls etc) of the captioned premises. After

observing all works which was done till date and it was understood that the said work do not require any permission from KMC as per rule 3 (2) of KMC Building Rule, 2009. The constructional work which was going on at first floor of the subject premises also does not require any sanction from KMC. Moreover, the partition walls constructed were/are not adding up any extra load beyond permissible limit of the existing structure.”

In view of the opinion of the Executive Engineer of the Kolkata Municipal Corporation (Building), the police authorities were without any clue definitely how to proceed with the initial case registered being Hare Street P.S Case no. 36 dated 11.02.2023. The writ petition was initially filed for concluding the investigation within a definite period of time. However, during the pendency of the writ petition, police authorities submitted the report under Section 173 of the Code of Criminal Procedure thereby holding that no sustainable evidence could be collected and further prayed for discharge of the accused for want of evidences keeping open the case, if subsequent relevant evidences turned up in future.

The petitioner has been canvassing certain issues in the initial complaint before the police authorities. Having regard to the same, the petitioner would be at liberty to canvass all the issues before the learned Magistrate in seisin of the matter either under Section 173(8) of the Cr. P.C or Section 193 (9) of the BNSS. Learned Magistrate would take the contents of the application filed and exercise his own discretion while arriving at his own conclusion preferably within a period of two months from the date of filing of such application.

With the aforesaid observations, WPO No. 743 of 2024 is disposed of.

Report so submitted be kept with the record.

A copy of the report be handed over to the learned Advocate appearing on behalf of the petitioner.

(TIRTHANKAR GHOSH, J.)

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AR(CR)