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ORDER SHEET

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION

ORIGINAL SIDE

WPO/100/2025

LA MARTINIÈRE SCHOOL FOR BOYS AND ORS

VS

THE KOLKATA MUNICIPAL CORPORATION AND ORS

BEFORE:

The Hon'ble JUSTICE ANIRUDDHA ROY

Date: 13th February, 2025

Appearance:

Mr. Chinmoy Pradip Sharma, sr. Adv.

Mr. Sankalp Narain, Adv.

Mr. B. P Tiwari, Adv.

Ms. Debjani Sengupta, Adv.

Ms. Shrayashee Das, Adv.

Mr. Rohan Kumar Thakur, Adv.

Mr. Tribibesh Dasgupta, Adv.

...for the petitioner.

Mr. Swapan Kr. Debnath, Adv.

...for K.M.C

The Court: Upon urgency being pleaded and since the regular determination has been assigned to this Court, this writ petition has been taken up for consideration. Affidavit-of-service filed today is taken on record.

Mr. Chinmoy Pradip Sharma, learned Senior Advocate appearing through virtual mode with Ms. Debjani Sengupta, learned counsel for the petitioners submits that, the relevant school building is a declared heritage building. The petitioners were in the process of carrying minor repairing works in usual course of business at the said heritage building.

At this juncture, the Kolkata Municipal Corporation (for short KMC) has lodged a complaint dated January 29, 2025 (Annexure P11 at page 46 to the writ petition) before the jurisdictional Police Station. The principal charge is the violation of the provisions under Section 425(P) of the Kolkata Municipal Corporation Act, 1980 (for short KMC Act, 1980). This Court has also been informed by the petitioners that no further step has yet been taken by the police authority in terms of the said complaint dated January 29, 2025.

Learned Advocate for the petitioners submits that the said complaint is wholly without the jurisdiction and not tenable in the eye of law, as it is only the West Bengal Heritage Commission constituted under the provisions of the West Bengal Heritage Commission Act, 2001, is the jurisdictional authority to take steps in respect of any heritage building.

Mr. Swapan Kumar Debnath, learned Advocate appearing for the Kolkata Municipal Corporation submits that in respect of the heritage property within the jurisdiction of the Kolkata Municipal Corporation, KMC is duly authorized under the law to prevent and protect the same and if the KMC finds any action contrary thereto, which might affect the heritage property, it can take steps and accordingly by invoking the provisions under Section 425P of KMC Act, the subject complaint has been lodged. Learned Counsel for the KMC further prays for some time to take further instruction in the matter.

Per contra, learned Counsel for the petitioner submits that they are apprehensive that in terms of the said complaint dated January 29,

2025, the police authority may register an FIR and proceed against the petitioners.

After considering the rival contentions of the parties and upon considering the materials on record, it appears that jurisdictional police authority has not yet registered FIR as submitted on behalf of the petitioners. It further appears to this Court from the complaint dated January 29, 2025 that in exercise of its power under Section 425P of the KMC Act, the complaint was lodged.

Section 425P of KMC Act provides that any person who destroys, removes, alters, defaces or misuses any heritage building or does not Act or abets in the commission thereof in contravention of the relevant provisions under the KMC Act or Rules or the regulations, shall be punishable with rigorous imprisonment for a term which may extend to three years and also with the fine thereunder and in default, with further rigorous imprisonment. On a reading of the said provisions, this Court is also of the view that a specific finding has to be arrived at before inflicting penalty as provided under Section 425P of said KMC Act. However, it is also admitted on behalf of the petitioners that some minor repairing works were in progress at the heritage building premises. This Court is also not aware of as to the nature and character of such repairing works whether the same are in the nature mentioned under Section 425P of the KMC Act.

The petitioners are apprehensive of criminal proceeding that may be initiated against them on the basis of the said complaint dated January 29, 2025.

Accordingly, there shall be an order of injunction restraining the petitioners not to carry out any work of repairing or any civil work of whatsoever nature at the subject heritage premises without consultation with the appropriate authority of KMC and without proper verification by them till the next hearing.

In view of the above, there shall be no coercive steps to be taken against the petitioners till the next hearing.

The parties shall be at liberty to mention the writ petition for further consideration before the regular Bench subject to its convenience and upon notice to each other.

(ANIRUDDHA ROY, J.)