

OD-8

ORDER SHEET

WPO/274/2023
IA NO: GA/4/2023

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
ORIGINAL SIDE

BISWAJIT GOSWAMI
Versus
KMC AND ORS.

BEFORE:
The Hon'ble JUSTICE RAI CHATTOPADHYAY
Date : January 30, 2024.

Appearance:
Mr. Tapas Dutta, Adv.
...for the petitioner

Mr. Alak Kr. Ghosh, Adv.
Mr. Gopal Chandra Das, Adv.
...for KMC

The Court: Mr. Tapas Dutta, learned Advocate is representing the petitioner. Mr. Alak Ghosh, learned Advocate is representing the Corporation.

The writ petitioner being the occupant of the second floor of the building, namely, "Nicco House" at Kolkata is aggrieved with the alleged illegal and unauthorised constructions over the first floor of the said building.

The case has a chequered history insofar as the present writ petitioner has moved against the illegal constructions in the said building on as many as three occasions, including the present writ petition. The orders of the Court passed earlier has ultimately resulted into the respondent Corporation to pass

an order of demolition and initiate the process of demolition of the said building from fourth to eighth floors, vide order dated 18th September, 2023.

The writ petitioner's specific contention is that the 20,000 sq.ft. of floor area on the first floor of the said building over 30 cottah of land, is being used for unauthorisedly constructing 40 rooms. In doing so, according to Mr. Dutta, learned counsel, the respondent Corporation has been flouting the provisions of the Kolkata Municipal Corporation Act, particularly, that under Sections 390 sub-Section (1) Clause (a), Clause (h), Clause (k) and Section 392. He has also taken this Court to Rule 3 sub-Rule (2) of the Kolkata Municipal Corporation Building Rules, 2009 to submit that partition of the floor of building by constructing a single partition wall only, is permitted as per the statute, without any sanction plan issued for the same. Numeral partition walls to accommodate several units of separate rooms would, in a way, change the nature of the property and thus has been subjected to a full-fledged plan sanctioned by the Corporation, for the same, he says. According to Mr. Dutta, the ground on which the alleged unauthorised constructions are being allowed by the respondent Corporation over the said premises (1st floor) is untenable in the eye of law. He has taken this Court to the grounds as relied on by the respondent Corporation to support their decision allowing the alleged unauthorised construction without any sanction plan - which may be extracted as hereinbelow:-

“The constructional work which is going on at the 1st floor of the subject premises which also does not require any sanction from KMC and the partition walls those are being

constructed are not adding up any extra load beyond permissible limit of the existing structure as the internal partition walls are necessary for any structure for dividing the entire floor into different rooms for creating workable space.”

Mr. Ghosh for the Corporation, has indicated that the alleged construction of wall would neither be considered as any additional construction, nor would burden the property with additional or unbearable weight. On these considerations, he says, such constructions, if any, would not require any formal sanction of plan from the Corporation.

Mr. Dutta is desirous to rely on certain judgments in support of his argument, for which he has sought for some time.

Let this matter be adjourned today on his prayer and be listed again on 6th February, 2024.

(RAI CHATTOPADHYAY, J.)