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ORDER SHEET
WPO/100/2024
IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
ORIGINAL SIDE

SANDIP BOSE AND ANR.
VS
THE KOLKATA MUNICIPAL CORPORATION AND ORS.

BEFORE:
The Hon'ble JUSTICE RAI CHATTOPADHYAY
Date: 19th August, 2026.

Appearance:
Mr. Subhrangsu Panda, Adv.
Mr. Sumitava Chakraborty, Adv.
…for the petitioner

Mr. Alak Kr. Ghosh, Adv.
…for the K.M.C.

Mr. Rajdeep Bhattacharya, Adv.
…for the respondent no.10

The Court: In this writ petition, the petitioners/property owners have prayed for a direction to be made upon the respondent/K.M.C. Authorities, to initiate the demolition proceeding with regard to the illegal and unauthorized construction, having been carried out, as shown in the demolition sketch map attached to Demolition Case No.055/XIII/08-09 situated at 747A, Mahatma Gandhi Road, Ward No.115 and also has sought for direction for issuance of an

order of demolition and to demolish the unauthorized portion of the building, in accordance with law.

The grievance of the petitioners arises pertaining to an order passed by the Special Officer (Building) of the respondent Municipal Corporation, dated November 19, 2009.

In the same, the Special Officer (Building) of the respondent corporation has directed as follows:

> *" O R D E R E D*
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> *PART 'A' : That the Ps.R. shall restore the unauthorized used of car parking area and open area & the Ps.R. shall demolish the unauthorized construction marked 'X' in the D.Sketch of D/Case No.55-D/XIII/08-09 within 30 days from the dated of communication of this order, in default the KMC Authority shall demolish the same at the risk & cost of the Ps.R.*
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> *PART 'B' :That the P.Rs. shall retain the other unauthorized constructions marked in red ink in the Demolition Sketch of D/Case No.55-D/XIII/08-09 subject to payment of erection/re-erection charged U/s.400 read with Building Rule 40(1)(c) of the K.M.C. Building Rules 1990."*

Mr. Panda, learned advocate appearing for the petitioners has informed the Court the background of the case, that the father of the petitioners once entered

into a development agreement with the added private respondent in the instant writ petition. Consequently, the building plan got sanctioned by the developer. The added respondent as the developer has constructed the building. However, the owner, i.e., the father of the petitioners found the construction to have been made beyond the sanctioned building plan and hence, he lodged a complaint before the respondent Corporation regarding unauthorized construction of building by the private respondent. The said complaint ultimately culminated into the order as mentioned above by the Special Officer (Building), i.e., dated November 19, 2009 in which the said authority directed for demolition of some unauthorized portion and regularization of some portions of minor deviation in lieu of statutory fees.

The petitioners who are the successor-in-interest of the original complainant, have contended that in spite of lapse of a long time span in between, the respondent authority has not taken any steps for implementation of its own order dated November 19, 2009, by demolishing the portion of building constructed unauthorisedly.

Mr. Panda has further informed that the added private respondent in the instant writ petition once filed a Title Suit before the competent Civil Court being Title Suit No.224 of 2010. He says that by virtue of an order of injunction obtained in the said suit, the said private respondent enjoyed protection from implementation of the order of the respondent authority dated November 19, 2009, till long. However, on the basis of the order of the learned Trial Court dated April 4, 2025, passed in a Title Suit No.224/2010, Mr. Panda has

submitted that plaint in the said suit has been rejected by the Court, by allowing the petitioner's prayer under Order 7 Rule 11 CPC.

Mr. Panda, therefore, submits that at this juncture, there is no impediment for the respondent authority to implement its own order dated November 19, 2009 by demolishing the unauthorized portion of the concerned building. Therefore, in the instant writ petition he has sought for direction upon the respondent authority to implement its own order of demolition of the unauthorized portion of the said building.

Mr. Ghosh learned advocate appears for the respondent authority. Mr. Bhattacharya learned advocate appears for the respondent no.10, through virtual mode.

Mr. Ghosh learned advocate has indicated that the order which the petitioner intends to implement now is an old order of 2009. He indicates that in the interregnum, there have been several orders passed by this Court, even touching the points of authority, power and jurisdiction of the Special Officer (Building), to deal with the issue of unauthorized construction and pass an order for demolition. Mr. Ghosh has further indicated that though the petitioner argues before the Court in favour of the implementation by the respondent authority of its own order dated November 19, 2009, the prayer in the writ petition stands to be something else, that is, carrying out by the respondent authority a process of demolition with respect to the building, as mentioned in the prayer portion of the writ petition. It appears that the respondent authority has suggested that the said order of the Special Officer (Building) dated November 19, 2009, may be directed to be revisited by the competent office.

I have carefully perused the records and considered the submissions made on behalf of the parties present and made submissions before me.

It is not denied but an admitted fact that the order of the respondent authority that is of the Special Officer (Building) dated November 19, 2009 is still in vogue, not being interfered into, modified, quashed or set aside by any way. In such circumstances, it is the duty and responsibility of the respondent to duly comply with and implement its own order, in its letters and spirit. Evidently also that the said order dated November 19, 2009 of the Special Officer (Building) has not yet been complied with from the end of the respondent Corporation by initiating proceedings and taking measures to demolish the unauthorized portion within a time bound manner, as per the said order.

Though Mr. Ghosh has submitted that process has been undertaken for realisation of payment for retention of the specified portion of the property as was directed by the Special Officer (Building) in the said order, no such supporting document is available before the Court right now.

It further appears that the order of the Special Officer (Building) dated November 19, 2009 as above has reached its finality insofar as with respect to the said order passed by the authority under Section 400 of the Kolkata Municipal Corporation Act, 1980, no statutory appeal has ever been filed before the Municipal Corporation.

On the basis of the discussions made as above, the Court is of considered opinion that there appears no such sufficient or cogent ground to understand that the respondent authority would not be required any further to take steps to comply with its own order dated November 19, 2009 and that only lapse of time

should make the order, which is otherwise in vogue, as invalid or incapable to comply with, though the unauthorized portion of the construction still stands as it is. It is found that the competence of the Special Officer (Building) cannot now be challenged, in view of the fact that his authority, power and competence was unquestionable on the date of the said order; any subsequent order of this Court in this regard, if there is one, shall not have any retrospective operation.

Therefore, this Court finds it proper to dispose of the instant writ petition by directing the respondent no.4/Director General (Building) to take appropriate steps by mobilizing the respective office/offices of the respondent Corporation, for implementation of the order of Special Officer (Building) dated November 19, 2009, by demolishing the unauthorized portion of the building as mentioned in the said order, within a period of eight weeks from the date of communication of copy of this order.

Needless is to mention that the Court has not entered into the order of retention granted by the Special Office (Building) as above, meaning thereby that the respondent authority has to take appropriate steps in accordance with law for regularizing the minor unauthorized portion of the building as directed by the Special Officer (Building), in terms of the said order and in accordance with law.

With the direction as above, the present writ petition stands allowed and disposed of. Applications pending , if any, also stands disposed of.

(RAI CHATTOPADHYAY, J.)

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