

(2000) 09 CAL CK 0007
In the Calcutta High Court
Case No : Writ Petition No. 2231 of 2000

Bhagwati Dev Dalmia

APPELLANT

Vs

Calcutta Municipal Corporation

RESPONDENT

Date of Decision : 07-09-2000

Acts Referred:

Calcutta Municipal Corporation Act, 1980 — Section 401

Citation : (2001) 1 ILR (Cal) 95

Hon'ble Judges : Dilip Kumar Seth, J

Bench : Single Bench

Advocate : Ashoke Banerji, for the Appellant; Smritikana Mukherjee, for C.M.C., for the Respondent

Judgement

Dilip Kumar Seth, J.—The Petitioner was permitted to carry on certain construction work within a stipulated time since extended by 2 months from July 14, 2000. In the meantime a Notice u/s 401 of the Calcutta Municipal Corporation Act, 1980 stopping the work has since been issued to them on August 18, 2000.

2. Mr. Ashoke Banerjee, learned Counsel appearing for the Petitioners, contends that his clients have not deviated from the permission and that such Notice should have been served after inspection and giving them an opportunity of hearing.

3. Mrs. Smritikana Mukherjee learned Counsel appearing on behalf of the Respondent-Corporation. On the other hand, contends that there has been an inspection of the basis whereof the deviation has been noticed and, therefore, it is well within the power of the Municipal Authorities to issue the Notice u/s 401 of the said Act. The Petitioners would have an opportunity to raise their objection as soon as the proceeding u/s 400 of the said Act is initiated.

4. After hearing the learned Counsel appearing for both the parties. I dispose of the writ petition in the following manner:

The Municipal Authorities has jurisdiction to issue Notice u/s 401 of the Calcutta Municipal Corporation Act. 1980 if there are reason to be satisfied that there was any contravention of the Municipal Corporation Act. 1980 on the rules framed thereunder in the process of the construction. But, Section 401 of the said Act does not proceed further. It is only u/s 400 of the said Act that the Petitioners have an opportunity to make their submission. If the Corporation does not initiate a proceeding u/s 400 of the said Act, in that event the Petitioners would be hanging in the balance for an indefinite period.

5. Under such circumstances, if the Municipal Authorities do not initiate the proceeding u/s 400 of the said Act within a period of 2 weeks from the date of service of a copy of this order, the Corporation shall get the premises inspected by its own Surveyor or Inspector and identify the unauthorized construction. If there be any, in presence of the Petitioners or their Engineer, as the case may be. If there is any unauthorized construction, in that event a proceeding u/s 400 would be initiated following the procedures laid down therein.

6. In case there is no unauthorized construction, then the Petitioner's permission to repair may be extended for a suitable period.

7. If any proceeding is initiated u/s 400 of the said Act, the same shall be concluded as early as possible, preferably within a period of 3 months from the date of such initiation.

8. In the meantime the Petitioners are restrained from carrying out any repair" or construction work in the premises in question for a period of 2 weeks from the date of communication of this order to the Respondent.

9. With this observation the writ petition is disposed of.

10. There will be no order as to costs.

11. All parties concerned are to act on a xeroxed signed copy of this dictated order on the usual undertaking.