
(2014) 07 CAL CK 0105
In the Calcutta High Court
Case No : Writ Petition No. 917 of 2013

Saif Impex Pvt. Ltd.

APPELLANT

Vs

The Kolkata Municipal Corporation

RESPONDENT

Date of Decision : 25-07-2014

Acts Referred:

Calcutta Municipal Corporation Act, 1980 — Section 400, 400(1), 400(8), 401

Citation : (2014) 3 CALLT 706

Hon'ble Judges : Jyotirmay Bhattacharya, J

Bench : Single Bench

Advocate : Saktinath Mukherji, Malay Kumar Singh, Sandip Kumar De and Supriyo Ranjan Saha, Advocate for the Appellant; Gopal Chandra Das, Jayanta Narayan Mahanty and Suvasree Ghose, Advocate for the Respondent

Judgement

Jyotirmay Bhattacharya, J.—The petitioner has obtained a building plan sanctioned from the Kolkata Municipal Corporation for constructing a multi storied (G + 5) building at premises No. 12, Tara Chand Dutt Street, in Ward No. 44, Borough - V. In course of construction the petitioner raised an additional story above the 5th floor of the said building. As a result, Notice under section 401 of the Kolkata Municipal Corporation Act was served upon the petitioner directing him to stop construction in the said premises. Guard was also posted at the said premises by the Municipal authority. The petitioner has also paid a sum of Rs. 43,200/- towards the Guard posting charges from 12th February, 2013 to 24th April, 2014. Subsequently, the petitioner submitted a revised plan seeking sanction for construction of the 6th floor in the said building. The petitioner's application for sanction of the revised plan is still awaiting consideration before the Municipal authority. In the meantime the Municipal authority has decided to demolish the construction which was made by the petitioner in deviation from the sanctioned plan, by exercising its jurisdiction under section 400(8) of the Kolkata Municipal Corporation Act.

2. Having regard to the fact that there is nothing on record to show the existence

of immediate threat to public safety, I feel that the Municipal authority need not resort to the provision contained in subsection 8 of section 400 of the Kolkata Municipal Corporation Act for immediate demolition of the construction made on the 6th floor of the said building, particularly in view of the fact that the petitioner's application for sanction of the revised plan for regularising 6th floor construction in the said building is still awaiting consideration before the Municipal authority.

3. Accordingly, this Court disposes of the writ petition by directing the Municipal authority to proceed under section 400(1) of the Kolkata Municipal Corporation Act instead of proceeding under sub-section 8 of section 400 of the said Act in respect of the unauthorised construction which was made by the petitioner in deviation from the sanctioned plan. While doing so the Municipal authority will first consider the petitioner's application for sanction of revised plan and thereafter take the ultimate decision regarding demolition of the unauthorized construction allegedly made by the petitioner in the said building in deviation from the sanctioned plan, provided such unauthorized construction cannot be retained as per the Building Rules framed under the Kolkata Municipal Corporation Act, 1980.

4. Let it be recorded that the petitioner has given an undertaking before this Court that he will not raise any further construction on the 6th floor of the said building until the Municipal authority takes the ultimate decision on his application for sanction of the revised plan. It is, however, made clear that this order will not prevent the petitioner from completing the incomplete construction upto 5th floor strictly in terms of the sanctioned building plan.