

AISHAN HOSSAIN Vs THE KOLKATA MUNICIPAL CORPORATION & ORS.

Court: CALCUTTA HIGH COURT

Date of Decision: Sept. 15, 2017

Acts Referred: [Kolkata Municipal Corporation Act, 1980](#), [Section 400](#), [Section 400](#), [Section 401A](#), [Section 401A](#)

Hon'ble Judges: Harish Tandon

Bench: SINGLE BENCH

Advocate: Ramji Munsri, Swagata Datta, Gurudas Mitra, Suman Dey

Judgement

1. The present writ petition is filed seeking direction for demolition of an unauthorized construction of G+5 storied building at premises no.33,

Dr.Sudhir Basu Road, Kolkata-700 023.

2. According to the petitioner, the factum of unauthorized and illegal construction was known to the Corporation.

3. Yet, the Corporation did not take any step against the private respondent. On the other hand, the Corporation says that immediately upon

detecting that the private respondent has made an unauthorized and illegal construction, an FIR was lodged under Section 401A of the Kolkata

Municipal Corporation Act, 1980 and criminal proceeding was initiated against the said private respondent which ended in holding guilty and

penalty was imposed upon the private respondent with default clause.

4. Naturally, the private respondent gets exonerated and has merely continued to enjoy the unauthorized and illegal construction as the Corporation

did not take any step thereafter for its demolition.

5. It is submitted by Mr.Mitra, learned Advocate for the Corporation that the file is pending before the high level whether a proceeding is to be

initiated under sub- Section 8 of Section 400 of the said Act of 1980.

6. In an identical case, this Court in Shaheen Begum versus The Kolkata Municipal Corporation & ORS.(WP No.101/2007 decided on 24th

March, 2017) states as follows : There is an apparent and glaring event of construction of a six-storied building without any sanctioned plan.

7. The appearing respondents could not satisfy the Court or produce the iota piece of paper, which may remotely suggest either a permission or

sanction granted by the Corporation or the same is still pending consideration.

8. The Apex Court in the case of Dipak Kumar Mukherjee versus- Kolkata Municipal Corporation and Others., reported in (2013) 5 Supreme

Court Cases 336 showed their anguish for such illegal and unauthorised construction mushrooming and/or popping up in the different cities of the

country in these words:

2. In the last four decades, the menace of illegal and unauthorised constructions of buildings and other structures in different parts proportion. of

This the country Court has has acquired repeatedly monstrous emphasised the importance of planned development of the cities and either

approved the orders passed by the High Court or itself gave directions for demolition of illegal constructions as in K. Ramadas Shenoy v. Town

Municipal Council, Udipi, Virender Gaur v. State of Haryana, Pleasant Stay Hotel v. Palani Hills Conservation Awasthi, Council, Pratibha

Cantonment Coop. Housing Board, Society Jabalpur Ltd.v.v. S.N.State of Maharashtra, GN. Khajuria v. DDA, Manju Bhatia v. NDMC,

M.I.Builders (P) Ltd.v.Radhey Shyam Sahu, Friends Colony Development Committee v. State of Orissa, Shanti Sports Club v. Union of India

and Priyanka Estates International (P) Ltd.v.State of Assam.

8.What needs to be emphasised is that illegal and unauthorised constructions of buildings and other structures not only violate the municipal laws

and the concept of planned development of the particular area but also affect various fundamental persons. those and constitutional rights of other

The common man feels cheated when he finds that making illegal and unauthorised constructions are supported by the people entrusted with the

duty of preparing and executing master plan/development plan/zonal plan. reports belonging of to demolition the poor of hutments and jhuggi and

disadvantaged section The jhopris of the society frequently appear in the print media but one seldom gets to read about demolition of

illegally/unauthorisedly constructed multi-storeyed structures raised by economically affluent people. prompt action The failure of the State

apparatus to take to demolish such illegal constructions has convinced the citizens that planning laws are enforced only against poor and all

compromises are made by the State machinery when it is required to deal with those who have money power or unholy nexus with the power

corridors.

29.It must be plans/zonal remembered plans, consideration the the that Planning prospectus accordingly provides electricity lines, for while of basic

drainage, preparing Authority future amenities sewerage, master takes into development and like and etc.water Unauthorised construction of

buildings not only destroys the concept of planned development which is beneficial to the public but also places unbearable burden on the basic

amenities facilities provided by the public authorities. construction public and of such creates buildings traffic becomes hazardous congestion. and

At times, for Therefore, it the is imperative for the public authorities concerned not only to demolish such construction but also impose adequate

penalty on the wrongdoer. The judgment rendered in case of Esha Ekta Apartments Cooperative Housing Society Limited and Others versus-

Municipal Corporation of Mumbai and Others reported in the same volume at page 357 should also be looked into. It is emphasized therein that

the municipal authorities must show restraint and may proceed cautiously against the arbitrary regularization of the illegal construction by way of

compounding or otherwise.

In view of the fact that the construction is without any sanction from the Corporation, it would be an idle and futile exercise and shall in a way give

a premium to an unscrupulous litigant to steal march over the procedure and avoid the rigour of the provisions of law. This is one of such cases

where Sub-section(8) of Section 400 should have been resorted to pass immediate order for demolition thereof.

9. This Court also feels that relegating the matter to the Mayor-in-Council for formation of the opinion and recording of the reasons in writing to

pass an order under Subsection(8) of Section 400 would not sub-serve any purpose nor would achieve the object behind incorporation thereof

and this Court, therefore, does not feel any impediment of fetter, in view of such facts narrated above to direct the recouRs.to be taken under the

aforesaid provision. The learned Advocate for the private respondent candidly submits that a plan was sanctioned for G+3 storied building and

there is no further plan sanctioned by the Corporation for the construction of the 4th and 5th floor.

10. It is, therefore, apparent and evident from the aforesaid stand that the additional floors above the sanctioned floor are illegal and unauthorized

and no equity can play in favour of the defiant citizen of the city.

11. The learned Advocate for the private respondent took a preliminary point that the writ petition is not maintainable at the behest of the petitioner

who is neither a owner nor a resident of the locality. This Court finds that a complaint was lodged by the petitioner before the Corporation.

12. It appears from the cause title of the writ petition as well as the complaint lodged with the Corporation that the petitioner was a resident of the

locality and, therefore, there is no difficulty in maintaining the writ petition alleging the illegal and unauthorized construction as it infringes his civil

rights.

13. This Court, therefore, does not find any substance in such preliminary point taken by the private respondent.

14. This Court, therefore, directs the municipal commissioner to immediately depute the requisite required personnel for demolition of the 4th and

5th floor constructed by the private respondent at the said premises and shall ensure that the demolition would be completed within six weeks from

the date of communication of this order.

15. It is open to the municipal commissioner to approach the local police station for rendering adequate protection and assistance in carrying out

the said demolition work and on such approach, the officer-in-charge of the concerned police station is directed to provide adequate police

personnel and shall also see that the demolition work is carried out without any obstruction and/or disturbances from any corner. The writ petition

is, thus, disposed of. There shall be no order as to costs.

16. After the delivery of the order in open court, the learned Advocate for the private respondent prays for stay of the operation of the said order.

This Court does not find that it is a fit case that the court should consider such prayer. Hence, the same is hereby rejected.