

Item No.26

In the High Court At Calcutta  
Constitutional Writ Jurisdiction  
Appellate Side

19.12.2023  
Ct-24

WPA 22588 of 2023  
Babita Basu & Ors.

v.

The State of West Bengal & Ors.

Mr. Manik Lal Poddar  
... for the petitioners.

Mr. Tapan Coomaar Dey  
Ms. Debangana Dey Nayak  
... for KMC.

Mr. Nabajit Prasad Basu  
Mr. Arindam Mitra  
... for the State.

Mr. Supratik Basu  
Ms. Sutapa Dutta  
... for the respondent nos. 7 & 8.

The petitioners complain of illegal and unauthorized construction at premises no. B/16/2/H/7, Nandalal Bose Lane, Ward No. 7, Borough-I.

On a complaint alleging unauthorized construction the department inspected the subject premises and detected construction of RCC column in the ground floor being made without taking any permission from the Corporation. A stop construction notice under Section 401 of the Kolkata Municipal Corporation Act, 1980 was issued with intimation to Shyampukur Police Station.

The matter was processed and an order of demolition was passed invoking provision of Section

400(8) of the Act. The Corporation thereafter acceded to the prayer of the private respondent no. 7, Sri Khokan Das for regularization of the unauthorized construction.

The Executive Engineer(C) issued notice under Section 400(1) of the Kolkata Municipal Corporation Act, 1980 read with Circular No. 19 of 2021-22 of D.G.(B) dated March 25, 2022 and directed the private respondent to deposit 50% of the security deposit as per the aforesaid Circular for proceeding further with the notice under Section 400(1) of the Act.

Learned advocate representing the private respondent nos. 7 & 8 submits, upon instruction that, a sum of Rs. 27,000,00/- has been deposited by the private respondents.

The petitioner contends that the property in question is a thika property and the petitioner herein is the thika tenant. Sri Khokan Das, the private respondent happens to be the bharatia of the subject premises. Without taking any permission from the Thika Controller, the construction work has been made.

It appears from the instruction forwarded by the Executive Engineer(C)/Building Department, Borough-1 that the Special Officer (Building) who is in seisin of the proceeding under Section 400(1) of the Act passed an interim order on October 6, 2023 directing the person responsible to submit permission from the Thika Controller within 45 days.

It is evident from the instruction forwarded by the Corporation that the proceeding to deal with the unauthorized construction is pending consideration before the Special Officer (Building) under Section 400(1)

of the Act. The aforesaid officer shall take necessary steps to conclude the proceeding at the earliest.

An opportunity of hearing shall be provided to the writ petitioner herein to highlight the illegalities of the construction especially because the writ petitioner is the thika tenant.

The Special Officer (Building) shall conclude the proceeding at the earliest but positively within a period of twelve weeks from the date of communication of this order.

Instruction forwarded by the Officer-in-Charge, Shyampukur Police Station be retained with the records.

The writ petition stands disposed of.

Urgent certified photocopy of this order, if applied for, be supplied to the parties expeditiously on compliance of usual legal formalities.

SH

**(Amrita Sinha, J.)**