

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
ORIGINAL SIDE

W.P.O. NO. 374 OF 2020
KRISHNAPADA PAUL @ K.P. PAUL
-VERSUS-
THE KOLKATA MUNICIPAL CORPORATION & ORS.

BEFORE:
THE HON'BLE JUSTICE
SABYASACHI BHATTACHARYYA
DATED: NOVEMBER 20,2020
(Via Video Conference)

Appearance :
Mr. Prosenjit Mukherjee, Adv.
Mr. Tirthankar Mukherjee, Adv.
Ms. Madhurima Sarkar, Adv.
...for petitioner
Mr. S.N. Mitra, Sr. Adv.
Mr. Abhijit Sarkar, Adv.
Mr. Asutosh Saraf, Adv.
Mr. Debashis Sarkar, Adv.
Mr. Debashis Ghosh, Adv.
Mr. Sandip Kr.De, Adv.
...for respondents
Mr. Alok Kr. Ghosh, Adv.
Mr. S.K. Pandey, Adv.
...for K.M.C.

The Court :- The present writ petition has been preferred for a writ in the nature of prohibition restraining the respondent nos. 1 to 5 as well as the private respondents from demolishing the building-in-question, as well as the alleged rented portion of the petitioner, without adopting due process of law. A writ in the nature of certiorari has also been sought, directing the respondents to produce the records regarding the impugned notice dated January 14, 2020 and a report at pages 29 to

39 of Writ Petition No. 200 of 2020 pertaining to those being quashed and set aside.

It is evident that, apart from the prayer of certiorari, there is no prayer in the writ petition containing a specific challenge to the said notice under Section 411(2) of the KMC Act, 1980.

Learned Counsel for the petitioner, by relying on certain photographs annexed to the writ petition, argues that the Corporation is trying to demolish the disputed premises, including a portion thereof which the petitioner is also a tenant.

The petitioner relies on an order dated February 7, 2019 passed in Title Suit No. 237 of 2016, filed by one of the other tenants in the same building, against the landlords/private respondents, whereby an order was passed restraining the landlords from demolishing the building, housing the present prescribed premises which was under occupation of the plaintiff therein (schedule B property in the said suit) and disturbing the possession of the plaintiff therein, till disposal of the suit.

It is submitted that since the petitioner is also a tenant in the same building, in the event the building is demolished, the petitioner shall also be affected, in the process violating the order passed by a Civil Court in favour of another tenant in respect of the same property. Learned Senior Counsel appearing for the private respondents points out that the petitioner himself, in a complaint filed on October 14, 2020,

made certain allegations only against the private respondents in respect of the alleged violation of the injunction order. It is categorically argued on behalf of the private respondents that the said order contained no allegation, as such, against the KMC.

Learned Counsel further argues that the injunction application is not binding on the KMC and that the observations made in the said order made it clear that there was no bar on the KMC from proceeding with a demolition of the suit premises under due course of law.

Considering the submissions of the parties, it is obvious is that the order dated February 7, 2019 passed in Title Suit 237 of 2016 is not binding on either the KMC or the petitioner herein, since they were not parties thereto. Contrary to the submissions of learned Counsel for the petitioner, a Civil Court's order, unless it is a *judgement in rem*, governs only the parties to the *lis* and does not affect non-parties.

That apart, learned Senior Counsel for the private respondent is justified in pointing out that the petitioner did not lodge any complaint against the KMC and, as such, cannot cite the complaint dated October 14, 2020, containing allegations only against the landlords, as a cause of action for the present writ petition.

Further, no specific challenge has been preferred by the petitioner against the notice dated January 14, 2020 issued by the KMC under Section 411(2) of the 1980 Act, as reflected from the prayers made

in the writ petition. It is clear from the order passed by a Co-ordinate Bench of this Court, also relied on by the petitioner, that the said order (dated June 5, 2020), was only an ad interim order where the issues involved in the present writ petition were not even dealt with. The said writ petition, bearing WP 200 of 2020, has been filed by the landlords against the Kolkata Municipal Corporation as well as the petitioner, as well as other respondents, seeking mandatory direction on the KMC to take steps under the 1980 Act. The observations therein, that the owners have not been able to make out a prima facie case of inability to act due to conduct of the respondent and that it was made clear that in the event of any mishap or occurrence of the of the said premises, the owners shall not be liable under the Civil or Criminal Law, does not absolve the KMC in any manner from undertaking its duty as imposed by law. The said observation, apart from being ad interim in nature, does not in any way debar the KMC from issuing a notice under the appropriate provisions of law for demolition of the disputes premises and/or from giving incidental notices to the occupants to evict the premises.

Moreover, it is seen from the averments made in the writ petition that no independent defect has been pointed out in the notice dated January 14, 2020, neither has it been established (even prima facie) that the Corporation acted beyond its jurisdiction in issuing the same.

In any event, it was specifically observed by the Civil court in its order dated February 7, 2019, as rightly argued by the private respondents, that the interim order of injunction could not have stopped the KMC from invoking the legal provisions mentioned therein, being Sections 412 and 411(4) of the KMC Act, 1980.

In the above factual matrix, the petitioner has failed to make out any case for interfering with the statutory rights of the KMC, in issuing a notice under Sections 411 of the 1980 Act.

Hence, WPO 374 of 2020 is dismissed without any order as to costs.

Urgent certified website copies of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(SABYASACHI BHATTACHARYYA, J)

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