

ORDER SHEET

WPO/598/2019
IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
ORIGINAL SIDE

AMITAVA CHATTERJEE & ANR
Versus
STATE OF WEST BENGAL & ORS.

.....

BEFORE:

The Hon'ble JUSTICE ARINDAM SINHA

Date : 10th December, 2020.

Appearance:

Mr. Sunrit Deb, Adv.

Mr. Ranjit Kumar Ghosal, Adv.

Mr. Pranab Kumar Ghosh, Adv.

..for Petitioners.

Mr. Samir Dutta, Adv.

Mr. Subrata Mukherjee, Adv.

..for Respondents.

Mr. Gurudas Mitra, Adv.

Mr. Z. Rahaman, Adv.

..for KMC.

Mr. Debjit Mukherjee, Adv.

Ms. Susmita Chatterjee, Adv.

..for State.

The Court:-Mr. Deb, learned advocate appears on behalf of petitioners. He presses for orders on the writ petition. He relies on annexure P-3 and P-4. Annexure P-3 is notice dated 16th September, 2017 issued under section 411(1) of Kolkata Municipal Corporation Act, 1980 on owner and occupiers of premises 90, Lenin Sarani, Kolkata-700013, Ward 50. Annexure P-4 is another notice issued on 7th February, 2018 issued under section 411(2), to owner and occupiers of the same premises. He submits, in spite of having issued these notices the Corporation has failed to act thereafter.

Mr. Mitra, learned advocate appears on behalf of the Corporation and submits, petitioners in pressing this writ petition are seeking to evict occupiers in the building through the Corporation. Mr. Samir Dutta, learned advocate appears on behalf of proforma respondents, as impleaded in the writ petition and submits, there can be no order made against his clients. Civil proceedings are pending between petitioners and his clients.

Power to order removal of dangerous buildings has been provided for in section 411. The notices have been issued by the Corporation exercising powers provided in sub-sections (1) and (2). Court is not willing to presume that the Corporation issued these notices at somebody's instance and not on basis of facts, requiring issuance. Sub-section (4) empowers Municipal Commissioner to act, on omission of the owners upon being required under sub-section (1). This power has been given to Municipal Commissioner by the Legislature and is to be exercised to remove dangerous buildings. It appears from notice dated 16th September, 2017 (annexure P3) that parts of the building are dangerous, which needs demolition, and some parts or the rest need repair. Exercise of this power can in no way be subjected to orders passed in civil proceedings, in which right and interest of the parties are to be determined and not condition of building or buildings. On query from Court,

Mr. Mitra submits, he does not have instruction that the notices have been recalled.

The Corporation will act in terms of the notice within four weeks from date of communication of this order. No further need be said about its power to act through the Municipal Commissioner.

On the above, the writ petition is disposed of.

(ARINDAM SINHA, J.)

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