

29.09.2021
Sl. No.2
srm

W.P.A. No. 11972 of 2021
Pawan Bhiwaniwala &Anr.
Vs.
Kolkata Municipal Corporation & Ors.

Mr. Srijib Chakraborty,
Mr. Soumyajit Bhatta
...for the Petitioners.

Mr. Raja Saha,
Ms. Tanusri Chanda
..for the State-Respondents.

Mr. Srijan Nayak,
Mr. Avishek Sikdar
...for the Kolkata Municipal Corporation.

Mr. Uday Narayan Betal,
Mr. Barun Chatterjee
...for the Respondent Nos.7, 9 & 11.

Service upon the added respondents has been effected.

None appears on their behalf.

The petitioners are some of the owners of Premises No.1, Hanspukur Lane, P.S. Posta, P.O. Burrabazar, Kolkata-700007. Sometime in 2014, the Kolkata Municipal Corporation issued a notice under Section 411(1) of the Kolkata Municipal Corporation Act, 1980 directing the owners to repair some damaged portions of the building and for re-construction of certain portions upon obtaining prior approval of the Corporation. There was however no direction for demolition of the portions beyond repair. The notice apparently speaks of

plastering, patch work, repairing, re-flooring, roof treatment, and some renovation, which should be undertaken upon prior approval of the Kolkata Municipal Corporation.

Now, the writ petition has been filed alleging that the building is beyond repair and the said building is required to be demolished. Reliance is placed on the certificate issued by a structural engineer.

Mr. Betal, learned Advocate appearing on behalf of the respondent Nos.7, 9 and 11/occupants/tenants, submits that unless the tenants are secured and reinstated, no direction can be passed for demolition.

Mr. Nayak, learned Advocate appearing on behalf of the Kolkata Municipal Corporation, submits that due to lapse of time the building is beyond repair and the whole building is required to be demolished. A notice board to that effect has also been placed at the premises by the corporation.

Having heard the learned Advocates for the respective parties, this Court is of the opinion that as the owners have already approached the Municipal Commissioner and the Assistant Engineer (C) Building, Borough-IV, KMC by filing a representation dated February 6, 2021, the said representation must be disposed of by the competent authority of the Kolkata Municipal Corporation upon hearing the petitioners as also the tenants, who are in occupation of the premises. The Municipal

Commissioner shall satisfy himself that the situation requires demolition upon making an inspection through a competent person in presence of all and if he comes to the conclusion that the building is beyond repair and is required to be demolished, then steps to be taken under the provisions of Section 412 of the Kolkata Municipal Corporation Act for vacating the premises but upon ensuring the process by which the tenants/occupants shall be reinstated in accordance with law and rules. The Commissioner/competent authority may require an agreement or undertaking to be filed by the owners before him with regard to the programme/method/scheme for reinstatement of the occupants and tenants.

This Court has not gone into the merits of the claims and counterclaims of the parties and it is for the corporation to decide the entire issue under Sections 411 and 412 of the Kolkata Municipal Corporation Act.

The entire exercise shall be completed within a period of four months from the date of communication of this order.

The writ petition is, thus, disposed of.

There will be no order as to costs.

All parties are to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)