

29.9.2021
Court No. 19
Item no. 30

sn

WPA No13757 of 2021

Md. Zakir Hussain
Vs.
Asansole Municipal Corporation & Ors.

(via video conference)

Mr. Kaushik Dey
Mr. Sanjib Kumar Dan
..for the petitioners
Mr. Saunak Bhattacharya
..for the Corporation
Mr. Supratim Dhar
Mr. Kunal Ganguly
..for the respondent no.4

This writ petition has been filed by one of the tenants of the premises situated at holding no.127(18), G.T. Road, Asansol, Ward No.11(old), 46(new), under Asansol Municipal Corporation.

It is the contention of the petitioner that at the hearing called by the Executive Engineer, Asansol Municipal Corporation, the petitioner was not allowed to consult the inspection report that was relied upon by the authority while passing the demolition order. The report stated that the building was in a dilapidated condition and needed to be demolished, which the petitioner refutes.

Mr. Dey, learned advocate for the petitioner submits that the law provides that the occupants and their contentions must be heard and without granting a proper opportunity of hearing to the

tenants and without providing a further opportunity to deal with the contents of the inspection report, the order impugned directing demolition dated August 11, 2021 could not have been passed. He further submits that the protection of the tenants in case of such demolition has also not been taken into consideration by the authority. According to Mr. Dey, the order of demolition and direction upon the tenants to vacate the premises ought to have been passed upon allowing the tenants to be present during the inspection and thereafter granting them an opportunity to deal with the report prepared.

Admittedly, the inspection report was not furnished to the tenants. The tenants did not get an opportunity to deal with such report and file objection in respect thereof. In the order impugned, reliance has been placed on the report

Mr. Dhar, learned advocate for the respondent no.4 submits that the building is not in a habitable condition and the allegations in the writ petition are contrary to the ground reality. That each day's delay will cause serious injury to the occupants and for this the landlord should not be held responsible. He further submits that the landlord undertakes to reinstate each and every tenant in the newly constructed building to an area equivalent to the

existing tenancy. Thus, according to Mr. Dey, the petitioner does not suffer any prejudice.

Mr. Bhattacharya, learned advocate for the Corporation submits that the Executive Engineer, Assansol Municipal Corporation has acted as a delegatee of the Municipal Commissioner. That the petitioner was heard. That the tenants have never asked for a copy of the inspection report. That the allegations are completely false and frivolous.

Thus, in my opinion, the hearing given to the tenants was not in complete compliance of the principle of natural justice.

Having considered the rival contentions of the parties, this writ petition is disposed of with a direction upon the competent authority of the Assasol Municipal Corporation to inspect the premises in question on October 4, 2021 at 12-00 noon in the presence of the petitioner as also the landlord and prepare a report. A copy of the report shall be supplied to the respective parties. Thereafter, a further hearing shall be given to all the parties and a reasoned order shall be passed within November 10, 2021, which shall be communicated to the respective parties.

It is made clear that while disposing of the matter afresh, upon hearing the parties, the competent authority shall also require the landlord to

submit undertakings in respect of the rehabilitation of each of the tenants and such factum shall be recorded in the order. It is further made clear that if there is any accident in the premises, the occupier cannot shirk his responsibility.

This Court has not gone into the merits of the claims and the counterclaims of the parties and the Corporation shall act and proceed in accordance with law. A single inspection will be held on the date and time fixed by the court in respect of all the occupants. No further notice will be required to be issued. The parties shall be present at the spot as directed hereinabove.

The order dated August 11, 2021 is set aside and quashed.

This writ petition is disposed of.

There will be, however, no order as to costs.

Parties are directed to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)