

07.12.2021
Sl. No.5
srn

W.P.A. No. 18918 of 2021
Moulita Ganguly & Ors.
Vs.
The State of West Bengal & Ors.

Mr. Kallol Basu,
Mr. Aniruddha Mitra,
Mr. Gourav Purkayastha,
Mr. Sudhakar Prasad,
Mr. Pradipta Bose,
Mr. Swapnamoy Sarkar

...for the Petitioners.

Mr. Sounak Bhattacharya
...for the Asansol Municipal Corporation.

Mr. Himadri Sikha Chakraborty,
Mr. Arunava Maiti
...for the State-respondents.

Mr. Rudra Prasad Motilal
...for the Respondent No.5.

The petitioners are the tenants/shopkeepers who have challenged the decision of the Executive Engineer, Asansol Municipal Corporation dated November 8, 2021. The order reads as follows:

“Considering the facts and circumstances the following order is passed:-

- (i) Ahmad Sayed, alleged owner/landlord of the building has submitted undertakings in respect of the rehabilitation of each of the tenants. Necessary steps, in this regard, shall be taken by the owner of the premises/landlord within 10 days from the date of the receipt of the order. The writ petition shall co-operate with the owner/landlord in all respects.
- (ii) Thereafter he will vacate his shop within 7 days from the date of completion of formalities regarding rehabilitation of his shop.

- (iii) After vacation of the shops by the tenants in the Building/commercial complex, the landlord/owner shall demolish the building within fifteen days from the date of vacation by all tenants.
- (iv) After demolition of the dilapidated building, in all respects. Abdul Sayed, the alleged owner/landlord shall file site plan and building plan in accordance with West Bengal Municipal Corporation Act & Rule and guidelines in the office of the Asansol Municipal Corporation and other legal formalities of all other authorities required by law.
- (v) The concerned Engineer(s) shall scrutinize/verify the plan in accordance with law.
- (vi) If there is any deficiency/inaccuracy in the plan/documents submitted, the concerned Engineer shall immediately inform the same to the applicant.
- (vii) The Landlord/Owner and or any other authorized person/persons/builder/Developer/Promoter shall complete the construction of the building in all respects within the stipulated period mentioned in the building plan and obtain completion certification.
- (viii) After obtaining completion certificate and compliance of all formalities regarding the tenancy of the writ petition, the alleged landlord/owner shall restore possession/rehabilitate the shop owner in the newly constructed building complex."

The challenge is that the entire order dated November 8, 2021 is based on an inspection report dated October 5/8, 2021. The inspection report is lacking in material particulars. Although the condition of the premises has been stated to be in a damaged and in a dilapidated condition and the first floor of the building which is partly vacant and partly constructed has also been found to be in a damaged condition, the order impugned was passed without specifying the nature of damage.

The said inspection was held and the order was passed, pursuant to a direction of this Court dated September 29, 2021.

The order of this Court was as follows:

“Having considered the rival contentions of the parties, this writ petition is disposed of with a direction upon the competent authority of the Asansol 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.”

According to the petitioners, this Court had directed inspection and preparation of a report which must indicate the nature of the damaged condition and also whether the building could be repaired or not.

Mr. Motilal, learned Advocate appearing on behalf of the respondent No.5/landlord, submits that the petitioners were present during the inspection. The inspection was conducted by authorized persons of the corporation, namely, Assistant Engineer, Borough-IV, and one Assistant Engineer, Sub-Assistant Engineers and a Surveyor. These technical experts had conducted the inspection jointly and found that the building was in

a dilapidated and damaged condition. It has also been submitted that the report clearly mentions that from a technical point of view, the building was beyond repair. Mr. Motilal also submits that the petitioners have alleged that the building can be repaired, although such pleadings have been verified as matters of submission. Thus, on the basis of such pleadings, the writ petition should not be entertained.

Mr. Bhattacharya, learned Advocate appearing on behalf of the corporation, submits that the report was accompanied by a sketch map which would indicate the nature of damage. Thus, even if the report did not elaborately state the nature of the damage, the sketch map should be looked into. Mr. Bhattacharya further submits that the tenants have a right to be rehabilitated in the newly constructed building in respect of their proportionate share which they had occupied. The corporation has also recorded how the tenants should be rehabilitated. He further submits that a copy of the inspection report as also the sketch map were handed over to the petitioners, but the petitioners did not file any objections to the same.

It is stated by the petitioners that they did not get a copy of the sketch map and as such they were not in a position to file an objection to the report.

These are disputed questions of facts and the Court is not in a position to ascertain as to whether the

report was supplied to the petitioners along with the sketch map or not and also whether the petitioners were given further opportunity to deal with the same.

Having considered the report, this Court also finds that the same is cryptic and lacking in material particulars. This Court is also of the opinion that the parameters, as laid down under Section 268 of the West Bengal Municipal Corporation Act, 2006 (hereinafter referred to as the said Act), have not been followed during the inspection and even if followed, the inspection report does not disclose how the provision of the statutes had been complied with during such inspection. The inspection report, which is the subject matter of challenge in this writ petition, does not indicate the method adopted while determining the nature and quantum of damage of the said structure. Regard had not been taken of sub-sections (6) and (7) of Section 268 of the said Act. The extent of damage has also not been stated.

The landlord has undertaken before this Court that all the tenants will be rehabilitated on the basis of the letter written to the Commissioner, Asansol Municipal Corporation dated November 9, 2021. A copy of the letter is taken on record.

The impugned order *per se* has categorically dealt with the issues of rehabilitation but the order is based on the report which is not sustainable in law for lack of

reasons. The order impugned and the inspection report are set aside.

The writ petition is disposed of without entering into the merits of contentions of the petitioners. The authorities are directed to proceed afresh.

The Executive Engineer shall depute a team of experts from the office of the Asansol Municipal Corporation to make a fresh inspection in the presence of the parties and prepare a detailed inspection report, as indicated hereinabove. In the report, it shall be indicated what method was applied. The condition of the structures and all the parameters as per sub-sections (6) and (7) of Section 268 of the said Act shall be considered by the authority in preparing such report. The inspection shall be held with 48 hours advance notice to the petitioners as also the landlord. Once the inspection is over, the detailed inspection report along with the sketch map shall be supplied to the parties. Parties shall be entitled to deal with the said report by filing exceptions to the same or suggest additions and alterations to the same and thereafter a hearing shall be given to the parties. A reasoned order shall be passed by the competent authority in accordance with the provisions of Section 268 of the said Act.

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

This Court does not have any reason, as of now, to doubt the *bona fide* of the landlord, who has agreed to rehabilitate the tenants to the extent they had been occupying and also undertakes to complete the construction within a reasonable time.

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.)