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ORDER SHEET
WPO 228 OF 2021
IN THE HIGH COURT AT CALCUTTA
COONSTITUTIONAL WRIT JURISDICTION
ORIGINAL SIDE

ARATI AGARWAL
VERSUS
THE KOLKATA MUNICIPAL CORPORATION AND ORS.

BEFORE:
The Hon'ble JUSTICE SHAMPA SARKAR
Date : 20TH July, 2021.

APPEARANCE:
Mr. Rupak Ghosh, Adv.
Mr. Abhijit Sarkar, Adv.
...for the Petitioner

Mr. Ranajit Chatterjee, Adv.
Mr. S. Panda, Adv.
...for the KMC

The Court : Affidavit of service is taken on record.

None appears on behalf of the respondent Nos. 5 to 13.

The writ petition has been filed challenging inaction on the part of the Kolkata Municipal Corporation in proceeding under Section 412 and 412A of the Kolkata Municipal Corporation Act, 1980 (hereinafter referred to as "the KMC Act, 1980"). It is submitted that the Kolkata Municipal Corporation has issued a notice under Section 411(2) upon the petitioner. The building is situated at premises No. 86, Tarak Pramanik Road, Kolkata-700006 (hereinafter referred to

as “the said premises”). Some of the persons in occupation are recognized by the petitioner as tenants and some of them are occupiers.

It is the contention of the petitioner that the Kolkata Municipal Corporation found the building to be in a dilapidated condition and admittedly asked the petitioner to demolish the premises. Now the Corporation cannot shrug their responsibility under the statute, by not acting in accordance with Section 412 and Section 412A of the KMC Act of 1980. It is submitted that the KMC must demolish the structure as the petitioner is unable to demolish the same. The occupiers are not vacating the premises. It is submitted that, it is only the statutory authority in exercise of jurisdiction vested upon it by law, who can demolish the dilapidated structure upon ensuring that the occupiers vacate the same. It is submitted that any accident must be prevented. Any action by the landlord by forcibly evicting the occupiers from the premises in order to implement the direction of the Kolkata Municipal Corporation, will be contrary to the due process of law. Undoubtedly, the Kolkata Municipal Corporation issued a notice under Section 411(1) and 411(2) of the Kolkata Municipal Corporation Act, 1980 upon the petitioner. It is an admitted position that the Kolkata Municipal Corporation came to a specific finding and recorded its satisfaction that building is in a dilapidated condition and the same requires demolition.

Mr. Chatterjee, learned Advocate appearing for the Kolkata Municipal Corporation submits that the question of rehabilitation of the occupiers is an issue and as such the Kolkata Municipal Corporation cannot vacate the premises forcibly, in the interest of such persons.

Learned Advocate for the petitioner submits that the petitioner is willing to provide alternative accommodation to each of the occupiers of the premises in question till the alleged building is demolished and the new building is constructed in accordance with the sanction plan granted by the Kolkata Municipal Corporation. This matter is required to be decided by the Municipal Commissioner in exercise of power under Section 412 and Section 412A of the Kolkata Municipal Corporation Act, 1980.

Under such circumstances, the writ petition is disposed of with the direction upon the Municipal Commissioner to take a decision upon hearing all the parties.

The Municipal Commissioner shall pass such direction as may be necessary so that the interest of the parties is protected. Thereafter, a reasoned order shall be passed and communicated to all concerned. The entire exercise shall be completed within six months from the date of the communication of this order.

It is clarified that in case the respondent Nos. 5 to 13 should avoid service, the Kolkata Municipal Corporation shall hang a notice of hearing at a convenient place in the building and the portions under their occupation.

Parties to act on the server copies of this order.

(SHAMPA SARKAR, J.)