

WPO 313 of 2020

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
ORIGINAL SIDE

SHIW KUMAR DALMIA
Versus
THE KOLKATA MUNICIPAL CORPORATION & ORS.

BEFORE:

The Hon'ble JUSTICE MOUSHUMI BHATTACHARYA

Date : 19th February, 2021.

Appearance:
Mr. Malay Bhattacharya, Adv.
Mr. Ayan Dutta, Adv.
...for the petitioner.

Mr. Manoj Malhotra, Adv.
Mr. Suman Dey, Adv.
...for the State.

Mr. Subhrangsu Panda, Adv.
...for the KMC.

The Court : This writ petition has been filed for quashing of four impugned notices of the Kolkata Municipal Corporation by which the petitioner was refused permission to carry out repair works in the water filter supply pipe beneath the shop floor in which the petitioner carries on business. The building has been allotted to the petitioner by the KMC which has also given the sanctioned plan of the said building. The petitioner has been in possession of the allotted portion of the said building since August, 2019. The case of the petitioner is that since the beginning of 2020, the petitioner noticed that the floor and walls of one of the shop rooms in the ground floor allotted to the petitioner had become damaged due to continuous water leakage from the water supply pipes which passes beneath the floor and through the walls of the shop room. The grievance of the petitioner, as expressed by learned counsel appearing for

the petitioner, is that despite writing several letters from February to July 2020 to the KMC seeking permission for carrying out the required work and pointing out the facts with regard to water seepage. The KMC refused to give permission as would appear from its notices dated 17th March, 2020 followed by others of 13th July, 2020, 20th July, 2020 and 14th August, 2020 which are impugned in this proceeding. The consistent stand of KMC was that carrying out repair work/excavation work would hamper the foundation of the existing premises. The KMC has also demanded that the building be restored to its previous position pursuant to which an inspection will be conducted by the officials of the Building Department of KMC, failing which necessary action will be initiated against the petitioner under the provisions of The Kolkata Municipal Corporation Act, 1980 (the Act).

On 17th December, 2020 this Court had directed KMC to file a Report in relation to a joint inspection of the parties after noting that KMC had not complied with an earlier order in that regard. The Report dated 9th November, 2020 has been handed over today in the course of hearing. The Report indicates that it has been found upon inspection that the petitioner has lowered the existing floor level by two feet in violation of Section 409 of the Act by reason of which the water distribution pipe of the premises has been exposed.

Learned counsel for the petitioner has placed Section 258 of the Act and Rule 3 of the Kolkata Municipal Corporation

Building Rules, 2009 to urge that no permission was necessary from the KMC for the nature of repairs which were required to be undertaken. Learned counsel for the KMC has, on the other hand, placed Section 409 of the Act to contend that during the course of excavation or construction of any building, if the Municipal Commissioner is of the opinion that such excavation may cause danger to public, a written order may be issued for stopping of the excavation work until the matter is investigated and decided to the satisfaction of the Municipal Commissioner.

Upon hearing learned counsel appearing for the parties, this Court is of the view that under Section 258 of the Act the responsibility of maintaining the water works belonging to the Corporation in a good condition rests on the owner or occupier of the concerned premises. The petitioner is, admittedly, the occupier of the premises in the present case. Rule 3(2) of the Building Rules, 2009, carves out an exception to Rule 3(1) by providing that no building permit shall be required for certain works which have been enumerated under Rule 3(2) of the 2009 Rules. Clause (g) of Rule 3(2) provide for erection of a false ceiling in any floor and plastering and patch work for which no building permit shall be required. As submitted by counsel, the work which the petitioner undertook for repair of the water pipe included plastering and patch work as provided under Rule 3(2) (g) of the 2009 Rules.

On the factual score, the letters written by the KMC do not point to a solution in respect of the petitioner who,

admittedly, faced a great deal of difficulty as a result of leaking water pipes underneath the shop floor from the beginning of 2020 onwards. The replies from KMC only pointed to the possible hazards consequent upon undertaking of such repair works with a subsequent demand that the petitioner restore the premises to the previous position, failing which necessary action would be initiated against the petitioner. The notices of the KMC indicate an absence of a proactive inclination to find a solution to a problem which has been continuing for a substantial length of time. Rule 3(2)(g) is also relevant in this context and saves the requirement of obtaining a building permit for the work in (g) and also permits undertaking of the said work without the requirement of 15 days' notice in writing to the Commissioner as required in the second proviso to Rule 3(2)(e). The letters of the KMC also show an arbitrary stand in arresting the labourers hired by the petitioner and delaying inspection of the premises. It must also be mentioned that the submission made on behalf of the KMC during the hearing of the matter that the petitioner did not approach the appropriate person in the KMC was not taken in any of the four replies which came from the KMC at the relevant point of time. The inspection report of 19th November, 2020 also reiterates the stand of the KMC that the petitioner would be required first to restore the premises to its original position before any steps can be taken by the KMC.

The above stand by the KMC is not supported by the statutory provisions of the 1980 Act. Section 409 which has been referred to in the Report applies to a situation preceding a written order passed by the Municipal Commissioner upon satisfaction that the work undertaken will lead to any of the hazards contemplated under the said section. The petitioner has also expressed the acute difficulty caused by lack of water supply in his letter of 22nd June, 2020. Moreover, instead of taking appropriate steps, the KMC has, by its conduct, manifested a totally unreasonable stand of constantly threatening the petitioner with consequences as would be evident from the replies sent on various dates to the petitioner.

In view of the above, WPO NO.313 of 2020 is allowed in terms of prayer(a). The impugned notices sent by the Kolkata Municipal Corporation are set aside. The petitioner is, however, directed to restore the specified area of the premises where the excavation/work has been undertaken to its original condition after causing necessary repairs to the water pipes for stopping the leakage within a period of two weeks from date. The KMC will be at liberty to cause an inspection of the premises after the restoration work is completed and take steps, as required, in accordance with law.

The writ petition is disposed of in accordance with the above.

(MOUSHUMI BHATTACHARYA, J.)