

OD-1

ORDER SHEET
WPO/407/2021
IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
ORIGINAL SIDE

HEMANT BANGUR AND ORS
VS
THE KOLKATA MUNICIPAL CORPORATION AND ORS

BEFORE:

The Hon'ble JUSTICE SHAMPA SARKAR

Date : 17TH AUGUST, 2021.

Appearance :
Mr. Aniruddha Chatterjee, Adv.
Mr. Ajay Gaggar, Adv.
Mr. Subhajit Ghosh, Adv.
Mr. S. Mal, Adv.
...for the petitioners

Mr. S.C. Shrivastava, Adv.
Mr. Pradeep Kumar, Adv.
Ms. Puja Yadav, Adv.
...for the legal heir of respondent No. 13

Mr. Amitesh Banerjee, Adv.
Ms. Ipsita Banerjee, Adv.
...for the State

Mr. Biswajit Mukherjee, Adv.
Ms. Manisha Nath, Adv.
...for the KMC

The Court : The writ petitioners are aggrieved by the inaction on the part of the Commissioner, Kolkata Municipal Corporation Act, 1980 in implementing the order dated March 1, 2019. The petitioners submit that pursuant to a direction of a Division Bench of this Court, a proceeding under Section 412A was initiated by the Corporation. Initially the

Corporation was hesitant in implementing the order of the Division Bench. A writ petition was filed challenging such inaction and a Co-ordinate Bench directed the Corporation to act in terms of the order of the Division Bench. Pursuant to the direction of Co-ordinate Bench of this Court, the order appearing at page 154 of the writ petition dated March 1, 2019 has been passed. The operative portion is set out below:

“The owner of the captioned premises is directed to give proper rehabilitation to all the tenants/ occupiers of Premises No. 86, Madan Mohan Burman Street, Wd. No. 039, Borough IV before demolition of the existing building and to provide equivalent floor area to all the tenants/occupiers after construction of new building at Premises No. 86, Madan Mohan Burman Street, Wd No. 039, Borough IV.

The existing building is to be demolished by the owner of the Premises No. 86, Madan Mohan Burman Street, Wd No. 039, Borough IV at his own cost and risk under the supervision of an Empanelled Structural Engineer of K.M.C to avoid any accidental hazards. During demolition, all precautionary measures are to be taken by the owner of the said premises to avoid any accidental hazards to the neighboring premises and public in general.

The owner is directed to submit plan proposal through Architect/Licensed Building Surveyor (LBS) and Structural Engineer empanelled with Kolkata Municipal Corporation (K.M.C) to obtain the sanctioned building plan from the K.M.C complying with prevailing Building Rules & Regulations of K.M.C within 4(four) months from the date of receiving of this order. The owner is also directed to finish the constructional works within 24(twenty four) months from the date of receiving of the sanctioned plan to give possession to all the tenants/occupiers of the said premises.

Failing of any of the above conditions, the authority of K.M.C will take appropriate steps against the owner of the said premises for the purpose of safety and security of the tenants / occupiers of Premises No. 86, Madan Mohan Burman Street, Wd No. 039, Borough IV.”

Mr. Chatterjee, learned counsel appearing for the petitioner submits that pursuant to the said order the petitioners prepared draft agreements indicating the manner of reinstatement of the occupants of premises No. 86, Madan Mohan Burman Street. The draft agreement indicates that all these persons would be rehabilitated upon construction of a new building

on the site. The draft agreement has also been annexed to the writ petition along with the proposed plan submitted before the Corporation.

Mr. Chatterjee, learned counsel appearing for the petitioners submit that it is impossible for his client to vacate the premises as the occupants are not cooperating with the petitioners and they cannot be forcibly evicted.

The occupants have been impleaded as respondents to this proceeding. Service is complete upon them but they are not appearing before the Court. It is submitted that the respondent No. 13, Atal Behari Misra, expired.

Section 412 empowers the Municipal Commissioner to pass an order upon the occupants to vacate the building, which is admittedly in a dangerous condition. The Municipal Commissioner has the power to direct any police officer to remove such persons from the building and the police officer is bound to comply with such direction. The Municipal Commissioner also has the power to reinstate any such person who has been so removed from the building when the situation permits. Thus, in a situation like this, when the occupants do not vacate the dilapidated premises even after an order under Section 412A of the Act, the Municipal Commissioner may act in terms of Section 412 of the said Act, if the owner fails to evict the occupants. The order under Section 412A indicates that even the tenants/occupiers had submitted before the Municipal Commissioner that the building was in a dilapidated condition and they agreed that they were in favour of the new construction of a building. The other worry of the petitioner is that if the demolition is not done within a

short period, fatal accidents may occur and the petitioners will be penalized.

Under such circumstances, the writ petition is disposed of with liberty to the petitioners to approach the Kolkata Municipal Corporation with all documents in their favour, requesting the authority to exercise his jurisdiction under Section 412 of the said Act in accordance with law. The Municipal Commissioner shall pass necessary orders and take such steps as may be necessary upon taking into consideration the versions of the occupants and the draft agreements. Such decision shall be taken within three weeks from the date of receipt of the application of the petitioner. The petitioners will be bound to indicate to the Municipal Commissioner when and the manner in which such agreements shall be executed as the petitioners undertake before this Court to reinstate each and every occupant. If the request of the petitioners is not granted, reasons will be disclosed.

As the respondent No. 13 has expired, the petitioner undertakes to accommodate the heirs of the deceased in the portion in which the respondents No. 13 would have been reinstated in the new building. If the Municipal Commissioner exercises his jurisdiction under Section 412, the petitioner shall cause the demolition as directed by the Corporation in the order dated March 1, 2019. Everyday's delay might cause some hazard to the persons occupying the premises and the situation cannot be allowed to go out of hand hence prompt steps must be taken as per law.

(SHAMPA SARKAR, J.)