

12.04.2022
Court No. 19
Item no.11
CP

W.P.A. No. 2482 of 2022

Mr. Nurul Huda Layek
Versus
The Kolkata Municipal Corporation & Ors.

Mr. Kushal Chatterjee
Mr. Debrup Choudhury

...for the Petitioner.

Mr. Debjit Mukherjee
Mr. Dipankar Ghosh

....for the K.M.C.

Mr. Dipak Chakraborty
Mr. Pritam Mukherjee
Ms. Soma Kundu

....for the respondent nos. 5 to 9.

The contention of the petitioner is that the construction which is being carried on at premises No. 17A, Tarak Dutt Road has substantially damaged the premises situated at 7A, Col Biswas Road. The Kolkata Municipal Corporation (hereinafter referred to as 'the corporation'), was directed by this court to make an inspection and come back with a report.

The corporation has filed a report through the Executive Engineer (Civil), Borough No. VIII, Building Department dated April 11, 2022, from which it appears that the building situated at 7A, Col Biswas Road, was already damaged at some places due to

lack of maintenance. The building is mostly tenanted. With the construction at premises No. 17A, Tarak Dutt Road, further cracks have been formed at some places and the iron joists. The report further states that a structural engineer empanelled with the corporation may be engaged to ascertain the structural stability and the extent of the actual damage. The report is kept on record.

Mr. Chakraborty, learned advocate appearing on behalf of the respondent nos. 5 to 9, submits that the writ petition suffers from some material suppression. The title of the petitioner with respect to the property has been denied by a civil court by cancelling of the deed of conveyance by which the petitioner had become the owner of the property situated at 7A, Col Biswas Road. It is further submitted that an appeal is pending therefrom but no order of stay of the decree has been passed. It is also submitted that the execution proceedings have been stayed by the court.

Mr. Chatterjee, learned advocate appearing on behalf of the petitioner, submits that the very fact that the execution proceedings have been stayed would mean that the matter has not yet attained finality and the right of the petitioner in the said premises, is subject to the decision of the higher forum.

Be that as it may, the question of title is not relevant for the purpose of the writ petition. The writ petition is with regard to the inaction on the part of the corporation in ensuring that the respondent nos. 5 to 9 continued with the demolition work and subsequent construction at premises No. 17A, Tarak Dutt Road in conformity with the indemnity bond which had been submitted by them.

When there are findings that some damage has been caused to the adjacent building which was originally a part of the same building as premises no. 17A, Tarak Dutt Road, this court is of the view that the respondent nos. 5 and 6 shall engage an empanelled structural engineer of the corporation at their cost. Such structural engineer will prepare a list of repairing work which will have to be done by the respondent nos. 5 to 9, and the respondent nos. 5 to 9 shall carry out such repair work as indicated.

The structural engineer will also ensure that the construction at premises No. 17A, Tarak Dutt Road continues only upon assessment of the damage and the structural stability of the property situated at 7A, Col Biswas Road.

The petitioner shall allow open access to the builders as also the structural engineer and their men and agents into the premises in question to carry out the inspection and the repairing work and

the occupants of the said building shall not cause any disturbance.

Such engagement of an empanelled structural engineer shall be made within two weeks from date and, thereafter, the entire exercise shall be completed as per the time frame given by the structural engineer and the parties shall cooperate with each other.

Till the structural engineer makes his inspection and prepares the charter of repair, only brick work will be permitted at premises No. 17A, Tarak Dutt Road.

The writ petition is, thus, disposed of. There shall be no order as to costs.

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

(Shampa Sarkar, J.)