

IN THE HIGH COURT AT CALCUTTA
SPECIAL CIVIL JURISDICTION
APPELLATE SIDE

WPA 21314 of 2021
With
CAN 1 of 2022
(Assigned)

Partha Dan
Vs.
The State of West Bengal & Ors.

Mr. Dilip Kumar Saila
... For the petitioner.

Mr. Jahar Lal De
Mr. Supratim Dhar
... For the State.

Mr. Debjit Mukherjee
Ms. Susmita Chatterjee
... For KMC

Mr. Kaustav Ch. Das
... For the respondent no.6

The petitioner in this writ petition has, inter alia, sought for demolition of alleged illegal and unauthorized construction made at holding no.50 Padmapukur Road, P.S. Bhowanipore, Kolkata – 700020 (hereinafter referred to as the said premises) and has also sought for an enquiry to investigate into the complaints respectively dated 8th October, 2021, 9th October, 2021 and 6th November, 2021 and further claims a compensation of Rs.10 crores on account of damages alleged to have been suffered for acts of Kolkata Municipal Corporation (in short, KMC) connoted to be illegal by the petitioner as also done in

colourable exercise of power. The petitioner has also sought for an order for not giving effect to a notice issued by KMC under the provisions of Section 411(1) of Kolkata Municipal Corporation Act, 1980 (in short, KMC Act, 1980) on 23rd September, 2021 which is annexed to the exception filed by the petitioner against a report of KMC. The petitioner also prayed for consequential reliefs in respect of the main prayers.

The petitioner in paragraph 2 of the writ petition alleges that the petitioner's father, namely, Prafulla Kumar Dan by virtue of a lease deed dated 20th January, 1954 said to have come into possession of the said premises. The petitioner's father, according to the petitioner, was in peaceful possession during his lifetime, thereafter the petitioner is in possession and claims to be in absolute occupation of the said premises in terms of the said lease deed. This stand of the petitioner, however, has been altered in the subsequent averments filed by the petitioner. The petitioner later on says that his father was an agreement holder and by virtue of being so entered into the possession of the said premises. The petitioner thereafter has been in occupation of the same. In view of this inconsistent stand, the right claimed by the petitioner in respect of the said premises is shaken at the very initial stage. The right

of lessee cannot be equated with the right of an agreement holder. It is, however, well-settled principle of law that unless there is a specific declaration as to the right, title and interest as also possessory right in respect of an immovable property by a competent civil Court, the right as claimed by the petitioner as an agreement holder cannot be accepted to be a crystallized right. The petitioner, *prima facie*, has not been able to demonstrate his possessory right as a legal heir of the original lessee or as a legal heir of the agreement holder. In absence of such right having been *prima facie* demonstrated, the claim of the petitioner in either capacity cannot be granted in writ jurisdiction which proceeds on the basis of a right being available to the petitioner and has been infringed as per the first limb of Article 226(1) of the Constitution of India. However, in view of the litigation pending in respect of the right, title and interest of the petitioner vis-a-vis the said premises before different other forum, I refrain myself to delve further into the right of the petitioner in respect of the said premises.

The genesis of the issuance of the notice under section 411(1) of KMC Act, 1980 according to the petitioner's allegation appears to be an inspection by the engineer of KMC to the said premises at the instance of the respondent no.6. The petitioner in

paragraph 10 of the writ petition alleges that the respondent no.6 is a tenant of the petitioner in respect of part of the said premises without divulging any particulars as to the tenancy.

The petitioner, however, appears from the application, being CAN 1 of 2022 and the exception filed to the report of KMC is aware that a registered sale deed was executed in favour of the respondent no.6 on 23rd April, 2008 which the petitioner, however, alleges to be a forged and fabricated document. Civil suit is also pending in connection with the said deed. The writ Court cannot go into the validity of the document in favour of respondent no.6 and as such I refrain to make any observation as to the legality and validity of the sale deed dated 23rd April, 2008 executed in favour of the respondent no.6. The petitioner has also referred to an order passed by this Court on 10th June, 2010 in CAN 4038 of 2010 filed in WP 28321 (W) of 2008 (Sri Shyamananda Sahana vs. State of West Bengal & Ors), by which KMC has been restrained from mutating the property in question in favour of any third party so long as the Suit No.3257 of 2008 pending in the Fourth Court, Civil Judge (Senior Division), Alipore, is not finally disposed of. Admittedly, the document dated 23rd April, 2008 is prior to the passing of the order dated 10th June, 2010. The said order has a prospective

application and not a retrospective operation from 2008 when the writ petition was filed. In that view of the matter, the question of any embargo operating against the respondent no.6 in having his name mutated in the records of KMC prior to 10th June, 2010 cannot and did not arise. Even if the suit is pending, the mutation of the name of the respondent no.6 in the records of KMC does not confer any right, title and interest in favour of the respondent no.6. The mutation is only a recording of the fact as to who is responsible for payment of property tax. The respondent no.6 till the document dated 23rd April, 2008 is declared by a competent civil Court to be null and void continues to have some iota of right in respect of the said premises and as such could have invited KMC to inspect the property. The petitioner, assuming without admitting is in possession of a portion of the said premises or that the respondent no.6 is a tenant of the petitioner cannot stand in the way of the respondent no.6 in inviting KMC to inspect the said premises. That apart and in any event, KMC is statutorily obliged to look into the fact as to whether the said premises is in a dilapidated and ruinous condition, whether it is invited by someone or not. The petitioner also cannot stand in the way of KMC inspecting the premises either *suo motu* or at the invitation of any one else to ascertain the

condition of the said premises whether the petitioner is in possessory right or being in occupation of the said premises in any other capacity, though the rights claimed by the petitioner are not admitted.

The notice issued by KMC is annexed to the report filed by KMC in another writ petition, being WPA 3606 of 2022, also filed by the petitioner pertaining to the same premises. In the said writ petition, being WPA 3606 of 2022, I had passed an order on 13th May, 2022, inter alia, directing KMC to file a report in form of an affidavit stating therein the subsequent steps, if any, taken pursuant to issuance of the notice dated 23rd September, 2021. The petitioner has filed an appeal against the order dated 13th May, 2022 passed in WPA 3606 of 2022. However, prior to filing of the appeal, KMC had filed its report which had been taken on record by the time the appeal was filed and filing of such appeal was brought to my notice. The petitioner has filed his exception to the report of KMC even after filing of the appeal. Despite the writ petition being WPA 3606 of 2022 and the present writ petition, being WPA 21314 of 2021, were adjourned at the instance of the petitioner for the appeal being pending, but the petitioner has taken no steps to have the appeal heard. In fact, there is no appeal in respect of the instant writ petition and that there being no order of

stay against the order 13th May, 2022, there is also no embargo on this Court in proceeding with the present writ petition.

After hearing the parties and considering the materials on record, which includes the report and exception filed in the other writ petition (WPA 3606 of 2022) which involves the same provision, I find that the writ petitioner's challenge to the notice dated 23rd September, 2021 issued under Section 411(1) of KMC Act, 1980 is devoid of merits. The notice has not been challenged either on the ground of legality or being without jurisdiction. KMC, as discussed hereinabove, is authorised to issue a notice under Section 411(1) of KMC Act, 1980. The notice has also specified the repairs and/or demolition required to be made in the supervision of a Licensed Building Surveyor (in short LBS) and Empanelled Structural Engineer (in short ESE), there is, as such, no infirmity in the notice itself. The only challenge thrown by the petitioner to the said notice is on ground of KMC acting on the invitation of the respondent no.6 whose right, title and interest is under challenge. As discussed hereinabove, the same is not a ground to prevent KMC from issuing such notice. Thus, this can also be no ground of challenge to the notice.

The provisions of Section 411(1) do not provide for a hearing prior to issuance of the notice, on the

contrary provides that any wall or building, or anything affixed thereto, be deemed by the Municipal Commissioner to be in a ruinous state, or likely to fall, or to be in any way dangerous. The Municipal Commissioner shall forthwith cause a written notice to be served on the owner, requiring such owner or occupier to forthwith demolish, repair or secure such wall, building or thing, as the case may require.

The petitioner is neither the owner nor he has prima facie established that he is the occupier. The petitioner's name also does not figure in any form in the municipal records. The petitioner has also failed to show the same. In absence of either of these rights being prima facie demonstrated, the petitioner is also not entitled to a notice under Section 411(1) of KMC Act, 1980. The petitioner, therefor, also does not come within the second limb of Article 226(1) i.e., "for any other purpose". The petitioner, therefor, cannot challenge the notice to be invalid or issued in violation of the principles of natural justice.

The other claim of the petitioner for demolition of the alleged construction said to have been made at the premises is an issue which requires at the first instance considered by KMC, if any, specific allegation regarding the same are made to KMC. The illegal construction, according to the petitioner, emanates from the alleged work carved out pursuant to the

notice under Section 411(1) of KMC Act, 1980. The repairs and/or demolition said to have been carved out pursuant to and in terms of the notice is for the subjective satisfaction of KMC. At the instance of the petitioner for the reasons as aforesaid, I am not required to go into the same.

The representations and/or complaints alleged to have been made by the petitioner on 8th October, 2021 (appearing at page 159 of the writ petition), 9th October, 2021 (appearing at page 160 of the writ petition) and 16th October, 2021 (appearing at page 162 of the writ petition) are vague and do not specify the nature of alleged illegal construction said to have been made at the said premises. On the other hand, KMC who is authorised under the statute to look into the nature of construction, by filing a report on affidavit, has stated that in an inspection subsequent to the issuance of the said notice, it has been found that the party carried out the suggested repair works without changing the character and dimension of the existing structure in compliance with the said notice and no portion of the building has been demolished, the building is presently in repaired and secured condition and to be used for residential purpose. The petitioner has also not been able to demonstrate that such recording is prima facie incorrect, though he has filed apart from the writ petition an application, being

CAN 1 of 2022, and an exception to the report filed by KMC in the other writ petition.

In the aforesaid facts and circumstances, I do not find any merit in the claims made by the petitioner or is persuaded to interfere into the issuance of the notice or any act undertaken pursuant thereto. The writ petition, therefor, fails and is, accordingly, dismissed.

In view of the dismissal of the writ petition, the connected application, being CAN 1 of 2022, is also dismissed.

Urgent photostat certified copy of this order, if applied for, be given to the parties upon compliance of necessary formalities.

(Arindam Mukherjee, J.)