

Sl. No.4
10.11.2022

Court No.24
B.M.

In The High Court At Calcutta
Constitutional Writ Jurisdiction
Appellate Side

WPA 23279 of 2022

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IA No.: CAN 1 of 2022

Md. Nasrullah & Ors.

v.

The Kolkata Municipal Corporation & Ors.

Mr. Prosenjit Mukherjee
Mr. Tirthankar Mukherjee
Ms. Madhurima Sarkar
Mr. Munshi Ashiq Elahi

... for the petitioners.

Mrs. Kuheli Chatterjee

... for the K.M.C

Mr. Himadri Sikhar Chakraborty
Mr. Somnath Basu

... for the State.

Mr. Debanik Banerjee
Mr. Anish Kumar Mukherjee

... for the respondent no.7/
Applicant in CAN no.1 of 2022

The premises No.24/H/11, Dent Mission Road,
Ward No.77, Borough-IX under the jurisdiction of the
Kolkata Municipal Corporation is suffering an order of
demolition passed way back in the year 2017.

The petitioners claim to be tenants of a portion of
the said premises suffering the demolition order. The
petitioners intend to prefer an appeal against the said
order of demolition.

Some of the owners of the said premises are
agreeable for execution of the order of demolition that
has been passed.

The petitioners moved the present writ petition before the vacation Bench citing urgency that no notice of demolition was served upon the petitioners. The vacation Bench by order dated 21st October, 2022 directed the Municipal Authorities to stay their hands in implementation of the notice under Sections 400/401 of the Kolkata Municipal Corporation Act till today i.e. 10th November, 2022.

It appears from the list of dates filed by the Kolkata Municipal Corporation that the notice under Section 401 of the Act was issued upon the person responsible on 3rd November, 2017 and FIR was lodged against the person responsible before the Police Station on the said date.

The order of demolition which was passed has been partly executed and the Corporation directed the occupants of the illegal structure to remove their belongings for effecting complete demolition. At this stage, the petitioners resisted the said demolition and did not vacate the unauthorized structure.

Learned advocate representing the private respondent no.7 claims that his client is a co-owner of the premises in question and submits that the petitioners do not have any right to resist the order of demolition.

It has been submitted that the petitioners being aware of the fact that construction is illegal has entered

into the agreement of tenancy. The agreement of tenancy annexed to the writ petition appears to have been executed after passing of the order of demolition.

The tenancy agreement clearly mentions that the tenant after due inspection, confirmation and satisfaction took the flat on monthly tenancy basis for residential purpose.

Learned advocate for the petitioners categorically submits that the owner did not disclose the fact that the premises in question was facing an order of demolition.

Be that as it may, it appears that the owner being aware of the fact that the order of demolition was passed in the year 2017, let out the unauthorized structure in favour of the petitioners, apparently, to resist the order of demolition. The same is absolutely impermissible.

The Corporation passed order directing the persons responsible to demolish the illegal structure. The persons responsible never preferred any appeal before the appellate forum challenging the order of demolition. The order of demolition has attained finality by now. The petitioner being a tenant of the structure constructed illegally and suffering an order of demolition cannot stand in the way of execution of the said order of demolition. Any person entering into an agreement in respect of a structure constructed

unauthorizedly is liable to face the consequence of demolition.

If the stand of the petitioner is accepted by the Court, then the same will set up a very bad precedent and unscrupulous builders will always try to induct third person(s) in the structure(s) constructed illegally to delay and/or prevent execution of the order of demolition. It will be an impetus to hold on to any structure constructed without following the provisions of law.

In the event the petitioner has any issue with his landlord, it will be open for them to agitate their grievances before the appropriate forum.

At this stage, there is hardly any scope to interfere with the order of demolition as has been passed and it will be open for the Corporation to take all steps including seeking police assistance for removal of the occupants for giving effect to the order of demolition.

The writ petition fails and is hereby dismissed.

IA No.: CAN 1 of 2022 stands disposed of.

Urgent photostat certified copy of this order, if applied for, be given to the parties on completion of usual formalities.

(Amrita Sinha, J.)