

WPO No.91 of 2020  
IN THE HIGH COURT AT CALCUTTA  
Constitutional Writ Jurisdiction  
ORIGINAL SIDE

SRI SNATOSH KUMAR DALMIA  
Vs.  
THE KOLKATA MUNICIPAL CORPORATION & ORS.

BEFORE:  
The Hon'ble JUSTICE AMRITA SINHA  
Date: 29<sup>th</sup> June, 2022.

Appearance:  
Mr. Tanmoy Mukherjee, Adv.  
Mr. Saptarshi Kumar Mal, Adv.  
...for Petitioner.  
  
Mr. Achintya Kumar Banerjee, Adv.  
Mr. Manojit Pal, Adv.  
...for KMC.  
  
Mr. Lal Mohan Hajra, Adv.  
Mr. Somesh Panja, Adv.  
Mrs. Anuradha Hajra, Adv.  
Mrs. Moutusi Hajra, Adv.  
...for Respondent No.6.

The Court:-The writ proceeding relates to the premises no.32, Banstalla Gullee, Ward-23, Borough-IV under the jurisdiction of the Kolkata Municipal Corporation.

The petitioner is aggrieved by the express order for demolition dated 3<sup>rd</sup> January, 2020 passed by the Executive Engineer (Civil) by invoking the provision under Section 411(4) of the Kolkata Municipal Corporation Act, 1980.

By the said order the Corporation directed that most dilapidated condition in the entire northern portion and stair at western portion from ground floor to top floor of a partially III storied mixed use group building in the aforesaid premises have to be demolished with immediate effect till completion to avoid casualty of inmates, passerby and public in general.

By the said impugned order the Corporation entrusted the demolition work upon respondent no.7, M/S. Vijay Kumar Enterprise.

The aforesaid notice under Section 411(4) of the Kolkata Municipal Corporation Act, 1980 was allegedly issued in compliance of the direction passed by this Court on 3<sup>rd</sup> December, 2019 in WP No. 350 of 2019 in the matter of Bahiti Properties Pvt. Ltd. & Anr. Vs. Kolkata Municipal Corporation & Ors.

The petitioner claims to be the tenant in respect of one garage space in the northern side of the ground floor of the aforesaid premises under the landlord, Bahiti Properties Pvt. Ltd.

The petitioner apprehends that once the building in question is demolished, then his tenancy right may be extinguished as the landlord presently has not come up with any proposal for reconstruction or development of the said property. The petitioner submits that this is a ploy adopted by the landlord to get rid of the tenant without following due provision of law.

Learned Advocate representing the landlord submits that as of now there is no proposal from the landlord for reconstruction or development of the said property. As and when the landlord intends to reconstruct or develop the said property then the petitioner will be rehabilitated in the new construction that may be made in the future.

Learned Advocate representing the Kolkata Municipal Corporation submits a report signed by the Assistant Engineer (Civil)/Building and the Executive Engineer (Civil)/Building, Borough-IV & V dated 28<sup>th</sup> June, 2022 wherefrom it appears that the department already took step for demolition and demolished some highly dangerous portion of the building but the entire demolition could not be completed.

Department has again fixed another date for demolition on 27<sup>th</sup> June, 2022 and the process will continue till completion of the demolition work to avoid casualty of inmates, passerby and public in general. Report further mentions that the Corporation has taken preparation for action under Section 412A of the Kolkata Municipal Corporation Act.

It appears from the submissions made on behalf of the parties that the petitioner is apprehensive of his tenancy being extinguished on demolition of the building in question. The landlord has submitted before this Court that as of now there is no proposal for reconstruction /development of the property but as and when step will be taken for reconstruction/development then necessary undertaking will be given by the landlord before the Kolkata Municipal Corporation for rehabilitating the tenant/occupier of the said property.

According to the provision of Section 411(4), the Municipal Commissioner has the power to issue notice if he thinks fit, to demolish, repair or secure or cause to be demolished, repaired or secured, any such wall or building or thing affixed thereto, on the report of the Chief Municipal Architect and Town Planner, certifying that such demolition, repair or securing of the building, wall or thing is necessary for the safety of the public or the inmates of the building.

The Commissioner has invoked the aforesaid provision and on being satisfied that the building in question is required to be demolished to avoid any casualty, issued notice for demolition of the same. The tenant does not stand in the way of demolition as such but is apprehensive that his tenancy right may be extinguished. Landlord has already submitted before this Court that as and when new construction will be made the tenant will be rehabilitated.

According to provision of Section 412(3), the Municipal Commissioner shall, on the application of any person who has vacated or has been removed

from any building in pursuance of any order or any direction, as the case may be, under this section, reinstate such person in the building as soon as the circumstances permit.

It appears from the submissions of the parties as of now there is no scope to reinstate the petitioner in the building as the same is liable to be demolished being a dangerous building but it will be open for the petitioner to apply before the Municipal Commissioner for reinstatement in the said building as soon as the circumstances permit.

The Municipal Commissioner is also directed to ensure that as soon as an application is made for sanction of the building plan in the said premises, a space may be earmarked for the tenant to be reinstated in terms of the provision of Section 412(3) and provision of Section 412A of the Kolkata Municipal Corporation Act, 1980.

With the aforesaid directions, the writ petition stands disposed of.

Report given by the Kolkata Municipal Corporation dated 28<sup>th</sup> June, 2022 be retained with the records.

Urgent certified photocopy of this order, if applied for, be supplied to the parties expeditiously on compliance of usual legal formalities.

(AMRITA SINHA, J.)