

OD-7

ORDER SHEET

IN THE HIGH COURT AT CALCUTTA  
CONSTITUTIONAL WRIT JURISDICTION  
ORIGINAL SIDE

WPO/470/2019  
SMT. SUHASINI LOHIA  
VERSUS  
KOLKATA MUNICIPAL CORPORATION & ORS.

BEFORE:

The Hon'ble JUSTICE SHAMPA SARKAR

Date : 27<sup>th</sup> January, 2022.

[Via Video Conference]

Appearance:  
Mr. Sukrit Mukherjee, Adv.  
Mr. S.R. Kakrania, Adv.  
Mr. Sanjeeb Seni, Adv.  
Mr. Tanuj Kakrania, Adv.  
For the petitioner.

Mr. Sourojit Dasgupta, Adv.  
Ms. Kumkum Mukherjee, Adv.  
For the respondent nos. 5 to 10, 13 to 16, 18, 23, 24.

Mr. R. Chatterjee, Adv.  
Mr. S. Panda, Adv.  
For the K.M.C.

The Court :- The petitioner is the owner of premises No. 114B, Chittaranjan Avenue, Kolkata-700 073. The petitioner has moved this Court for implementation of a notice dated June 1, 2016 issued under Section 411(1) of the Kolkata Municipal Corporation Act, 1980. By the said notice, all the tenants and occupiers of the said building were

directed to undertake thorough repairing works of the existing building under the supervision of an empanelled structural engineer of the Kolkata Municipal Corporation (KMC) and also to demolish the dangerous and ruinous portions immediately, to ensure the safety of the inmates and the public at large. It was further stated that in case of reconstruction, the approval of the Kolkata Municipal Corporation, Building Department, should be taken. The petitioner submits that the building is beyond repair. The occupiers and the tenants did not permit demolition of the dangerous portion and refused to vacate the premises. The petitioner contends that the Corporation ought to take steps for getting the building vacated so that the petitioner as the owner may demolish the ruinous and dangerous portion as the tenants and the occupiers would not do so. Section 412 of the Kolkata Municipal Corporation Act, 1980 permitted the Municipal Commissioner to pass necessary orders under such a situation. The petitioner also assures that the tenants and the occupants shall be rehabilitated once the building is demolished and the new building comes up, after a plan is submitted by the petitioner and sanction is granted by the Municipal Corporation. It is submitted that the owners obligation under Section 412 of the KMC shall be fulfilled

Having heard the rival contentions of the parties, a co-ordinate Bench of this Court had directed the Kolkata Municipal Corporation to cause an inspection and file a report. From the report filed by the Executive Engineer Civil, it appears that the repair works

which have been carried out were not adequate in order to render the building safe for habitation. There was a vertical tilt in the building of about 9 inches. The kari-barga ceilings, particularly, on the corridors were badly damaged. The iron rods/bars were rusted and corroded with time and due to natural wear and tear. Horizontal cracks were visible on the walls and ceilings. Thus, according to the Corporation, mere patch work, plastering, renovation and colouring would not ensure the safety of the building. It was also noted that the building was fully occupied by tenants. The occupiers have filed their exceptions to the report, inter alia, annexing another report prepared by a structural engineer. Photographs have been annexed to show that substantial repair work has been carried out and the building appears to be in a good condition. It is further submitted that some minor repairs are yet to be done. The structural engineer engaged by the occupants had certified that the building was structurally safe, sound and stable in all respects. Such report, however, is dated prior to the report filed by KMC.

Having considered the rival contentions of the parties and as there are contradictory reports before this Court, this Court is of the opinion that the matter should be referred to an expert. This Court does not have the expertise to assess the physical condition/structural stability of the building. Accordingly, the writ petition is disposed of with the following directions:

- a) The tenants and occupiers shall be allowed to complete the repair under the supervision and

guidance of an empanelled structural engineer of the Corporation at their own risk and cost, with precautionary measures and without disturbing the neighbours and public in general.

- b) The Corporation authorities may enter into the premises and cause inspection of the same, to ensure that the repair is being done as per law.
- c) The Head of the Department of Construction Engineering Jadavpur University, shall form a panel of experts, who shall make an inspection of the premises in question in presence of the parties and furnish their report on the condition of the building to the parties as also file the same before the Commissioner, Kolkata Municipal Corporation. Let such inspection be made and report be furnished within a period of three months from date of receipt of the fees, payable by the occupiers.
- d) All parties shall be entitled to respond to the said report prepared by the expert team and file their exception/objection/written version to the same before the Commissioner, Kolkata Municipal Corporation. Thereafter, the Commissioner, Kolkata Municipal Corporation shall act and proceed in accordance with

law on the basis of the report to be furnished as directed hereinabove.

- e) While deciding the issue, the Commissioner, Kolkata Municipal Corporation shall follow the procedure laid down by the statute and pass an order upon giving an opportunity of hearing to all the parties including the representative of the team of experts. Such order shall be passed and communicated within three months from receipt of the report of inspection.

This order is being passed on the basis of the report filed before this Court.

The fees payable to the said team for the inspection to be undertaken shall be decided by the Head of the Department and communicated to the learned Advocate-on-record for the tenants/occupiers. The fees shall be borne by the occupiers and deposited with the Head of the Department prior to the inspection. Any party who does not co-operate, shall be held responsible in case of any accident.

This writ petition is, thus, disposed of.

There will be no order as to costs.

All parties are to act on the basis of the server copy of this order.

(SHAMPA SARKAR, J)

snn.