

ORDER SHEET

WPO/1071/2021

IN THE HIGH COURT AT CALCUTTA

Constitutional Writ Jurisdiction

ORIGINAL SIDE

AMIT GUPTA & ORS .

-VS-

THE KOLKATA MUNICIPAL CORPORATION & ORS .

BEFORE :

The Hon'ble JUSTICE SHAMPA SARKAR

Date: 13th January, 2022.

Appearance:

Mr. Arindam Banerjee , Adv.

Mr Arnab Dutt, Adv.

..for the Petitioner.

Mr. Alak Kumar Ghosh, Adv.

Ms. Era Ghose, Adv.

..for KMC.

Mr. Debasish Ghosh, Adv.

..for the State.

Mr.Saptangshu Basu, Adv.

...for Respondent no.6.

The Court:-The Advocate-on-record of the owners of the subject building has produced the copies of the agreements entered into by and between the owners and the occupiers including some of the petitioners indicating that most of the occupiers had agreed to the proposal for rehabilitation made by the owners.

The writ petition was filed by some of the tenants of premises No. 2 Mullick Street, Kolkata 700 007. The petitioners prayed for a direction upon the Corporation to withdraw the notice of 'dangerous building' (Bipodjanak Bari)

affixed on the said premises with a further direction upon the respondents to allow the petitioners to repair their portions in the said building.

This Court had directed the Corporation to cause an inspection and file a report. One Mr. Ranijit Kumar Adhikary, B.E.(Civil) has filed a report before this Court from which it appears that the existing structure was repairable and would be habitable temporarily if the occupiers could repair the existing structure under the guidance of an enlisted Empanelled Structural Engineer of the Kolkata Municipal Corporation. However, the report also clarifies that a building plan must be submitted by the owners and occupiers under Section 393 of the Kolkata Municipal Corporation Act, 1980 before the corporation, so that a new building may come up on the premises and the tenants may be rehabilitated in the new building. Similar report has also been filed by the Executive Engineer (Civil) of the Building Department, KMC, from which it appears that the building was old, dilapidated and in a ruinous condition. That the occupiers had not taken any trouble to repair the portions which they were occupying for a long time. This resulted in the ruinous condition of the building. It also appears that some areas of the roof at the back portion of the building had collapsed a few days ago.

Mr. Banerjee learned Advocate appears on behalf of the petitioners and disputes such observations made by the Kolkata Municipal Corporation.

Records reveal that during the pendency of the writ petition, the Executive Engineer (Civil), Building Department, Borough-V allowed the occupiers of the building permission to do some repairing works by a letter dated 6th December, 2021. The details of such repair works have been enumerated in the permission.

The Corporation being an expert in this field has filed a report indicating that as a temporary measure some repair works could be done subject to the ultimate demolition of the building, construction thereupon and rehabilitation of the occupiers therein. Such permission was granted for temporary repair as a stop gap arrangement.

This Court does not find any impediment in allowing the petitioners to repair their portions as permitted by the Corporation in its letter dated 6th December, 2021. However, this Court is not an expert to decide and accept the contentions of the occupiers that the building was not in a dilapidated condition and was not required to be brought down for further re-building and rehabilitation of the occupiers. The Corporation has also suggested that an independent body may be appointed in order to ascertain whether the building was in a condition that repairs would salvage the building from collapsing or whether the Corporation was correct in its observation that the building would have to be brought down and a new building would have to be constructed thereon, as a permanent solution for the security and safety of the owners, occupiers and tenants. The expert team shall indicate in its report whether the building could be allowed to remain in the present condition and would be safe for habitation after being repaired.

Under such circumstances, the writ petition is disposed of with the following directions:

- (a) The willing occupiers shall be allowed to cause repair in terms of the permission granted by the Corporation by its letter dated 6th December, 2021 under the supervision and guidance of the Empanelled Structural

Engineer of the Corporation at their own risks and costs with precautionary measures and without disturbing the neighbours and public in general.

- (b) Such repair work shall be undertaken upon giving seven days prior notice to the Corporation.
- (c) The Corporation authorities may enter into the premises and cause inspection of the same upon receiving the notice of commencement of the repairing works and ensure that the repair is being done as per the permission.
- (d) 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 before the Commissioner, Kolkata Municipal Corporation. Let such inspection be made and report be furnished within a period of three months from date.
- (e) The petitioners as also the owners of the premises 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.

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.

This order is being passed on the basis of the report filed before this Court. The questions raised by Mr. Basu with regard to the occupiers having entered into an agreement for rehabilitation in the newly proposed building is not gone into and the said issues are left open to be taken into consideration at the appropriate stage. The prayer of the writ petitioners for removing the notice affixed by the Corporation as 'Bipodjanak Building' is rejected.

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 parties, which shall be borne by the owners and the occupiers in equal proportion, 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.)