

OD-11

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
ORIGINAL SIDE

APO/76/2022
WITH
WPO/2347/2022
IA NO: GA/1/2022

15, NOORMAL LOHIA LANE TENANTS' WELFARE ASSOCIATION AND ORS.
-VERSUS-
THE KOLKATA MUNICIPAL CORPORATION AND ORS.

BEFORE:

The Hon'ble JUSTICE ARIJIT BANERJEE
AND

The Hon'ble JUSTICE RAI CHATTOPADHYAY

Date : 22nd August, 2022.

Appearance:

Mr. Arindam Banerjee, Adv.
Mr. Sarosij Dasgupta, Adv.
Mr. Bimalandu Das, Adv.
Mr. Shomrik Das, Adv.
...for the appellants
Mr. Sakya Sen, Adv.
Mrs. Sima Chakraborty, Adv.
For respondent nos.6 to 13
Mr. Debjit Mukherjee, Adv.
Ms.Susmita Chatterjee, Adv.
For State
Mr. Alak Kumar Ghosh, Adv.
Mr. Debangshu Mondal,
For KMC

The Court : This appeal is directed against a judgment and order dated
July 20, 2022, whereby WPO No. 2347 of 2022 was disposed of.

The appellants were the writ petitioners before the learned single Judge. They are an Association of tenants of the premises in question which, we are told, is a fairly old building.

It is not in dispute that certain portions of the building require extensive repairs. The owners would go further and say that the building should actually be declared as condemned and it is beyond repairs. It poses serious threat to the members of the public in the vicinity of the building.

The appellants say that they have interacted with the Kolkata Municipal Corporation Authorities on several occasions proposing to repair the building at their own expense. The authorities have not responded to such proposals. The owners say that there was no such proposal.

We need not go into such dispute. The appellants approached the learned single Judge with a prayer for a direction upon the respondent authorities to take appropriate remedial action in respect of the premises in question. It appears that before the learned single Judge, the owners produced a notice issued by Kolkata Municipal Corporation under Section 412A(i) of the Kolkata Municipal Corporation Act. The relevant portion of the said Section reads as follows:-

“412A. Power to declare building or any part thereof condemned and to order demolition of such building. – Notwithstanding anything contrary contained in this Act, or in any other law for the time being in force or in any agreement, custom or usage or in any decree, judgement, decision or award of any court, tribunal or authority, where it appears to the Municipal Commissioner that demolition of a dangerous building under section 411 will cause hardship to the persons in occupation of such building and may not be conducive to public interest in the urban area suffering from acute shortage of accommodation, it will be open to the Municipal Commissioner to proceed in the manner, and take the steps, as set out, hereunder:

(i) issue a notice to the owner and also occupier recorded as such in the records of the Corporation calling upon them to show cause, within such period as may be prescribed, why the building in question or any portion thereof shall not be declared to be condemned for the purpose of this section and after hearing the causes shown within the said period or such further period as may be granted, if it is found necessary in public interest to declare the building or any portion thereof condemned and should be demolished immediately for public safety, the declaration may be made to that effect requiring the building or the specified portion thereof to be demolished;

(ii) a copy of the declaration under clause (i) shall be served upon the owner and occupants who are recorded in the records of the Corporation as also pasted on the outdoor of the building requiring the owner and the occupants to vacate the premises within a month from the date of service and pasting of

such declaration or within such extended period as may be granted;”

It was submitted before the learned single Judge on behalf of the writ petitioners that notice under Section 412A(i) of the Kolkata Municipal Corporation Act has not been served upon them who are the occupiers of the premises in question, as is mandatorily required under the aforesaid statutory provision. The learned single Judge disposed of the writ petition by the impugned order, the operative portion of which reads as follows:-

“As it appears from the documents produced before this Court and upon hearing the submissions made on behalf of the parties that the Kolkata Municipal Corporation has already issued notice under Section 412A(i) of the Act, accordingly, the Kolkata Municipal Corporation is directed to conclude the said proceeding strictly in accordance with aforesaid provision of law, after giving a reasonable opportunity of hearing to the owners as well as the tenants/occupiers or their representatives.

Learned Advocate representing the members of the petitioner No.1 submits that the show cause notice under Section 412A(i) of the Act has not yet been served upon the occupiers of the said premises. A copy of the notice issued in favour of the landlords under Section 412A(i) has been handed over to the learned Advocate representing the petitioners in Court today. The members of the petitioner No.1 will be at liberty to respond to the said notice.

The Kolkata Municipal Corporation shall take necessary steps to act strictly in accordance with law at the earliest to prevent any untoward incident.”

Learned advocate for the appellants/writ petitioners says that the language of the order impugned could be interpreted as directing the Kolkata Municipal Corporation Authorities to proceed on the basis that the building in question or portion thereof is decidedly condemned.

Hence, a clarification is sought for to the effect that the proceedings pursuant to the notice under Section 412A(i) shall be in accordance with law granting an opportunity to the appellants who are the occupants of the building to show cause as to why the building or any portion thereof should not be declared as condemned and/or does not require demolition.

Mr. Sen, learned Advocate appearing for the private respondents, who are the owners of the building and Mr. Ghosh, learned counsel representing the Kolkata Municipal Corporation say that there is no scope for mis-interpreting the order impugned. The apprehension of the appellants is baseless.

We do not wish to interfere with the order under appeal. However, we do clarify that the order impugned is not to be construed as a declaration that the building in question is a condemned building. The Municipal Commissioner who is the competent authority shall decide whether or not

the building is to be declared as condemned and/or requires demolition following due process of law, after giving full opportunity of hearing to all parties concerned including the present appellants who are the occupants of the said building.

The order impugned refers to a report of the Assistant Engineer(Civil), Building Department, Kolkata Municipal Corporation and the Executive Engineer (Civil), Building Department, Kolkata Municipal Corporation, Borough-V, dated July 19, 2022. The learned Judge has reproduced the contents of such report in the order impugned which apparently go against the interest of the appellants herein. The appellants say that neither was the said document a “report” nor were the appellants provided an opportunity to dispute the contents of such report. The document was only written instructions given to learned lawyers for Kolkata Municipal Corporation. The appellants are apprehensive that in the proceedings before the Municipal Commissioner or his delegate, the said document may be used against them.

We clarify that in the event the aforesaid “report” is relied upon on behalf of the Kolkata Municipal Corporation in the proceedings before the Municipal Commissioner or his delegate, first an opportunity will have to be granted to the appellants to file exception to such report.

Needless to say, copies of any document that the corporation authorities desire to rely upon in the proceedings before the Municipal Commissioner or his delegate will be made available sufficiently in advance to the appellants for the appellants to respond to the same.

Mr. Ghosh, learned counsel for the Corporation requests the Court to clarify that the appellant Association represents all the occupants of the building in question. Mr. Banerjee, learned Advocate appearing for the appellant Association says, on instructions, that all the occupants of the building in question are members of the appellant Association. However, a portion of the building has been kept under lock and key by the owners of the premises.

With the aforesaid clarification, the order under appeal is affirmed.

The appeal and the connected application are accordingly disposed of.

[ARIJIT BANERJEE, J.]

[RAI CHATTOPADHYAY J.]

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