

OD-7

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
ORIGINAL SIDE

WPO/2410/2022

JYOTI CLEARING AGENCY
Vs
THE STATE OF WEST BENGAL AND ORS.

BEFORE:

The Hon'ble JUSTICE SHAMPA SARKAR

Date : 23rd August, 2022.

Appearance:

Mr Bodhisatta Biswas, Adv.

Mr. G. Singh, Adv.

..for the petitioner.

Mr. Abhrajit Mitra, Sr. Adv.

Mr. A. Banerjee, Adv.

Mr. S. Mukherjee, Adv.

Ms. P. Basu, Adv.

Mr. D. Chakraborty, Adv.

Ms. S. Ahmed, Adv.

... for the respondent no.5.

Mr. Amitesh Banerjee, Sr. Adv.

Ms. Ipsita Banerjee, Adv.

..for the State.

The Court: Upon hearing the learned advocates for the parties, this Court is of the view that this is not a case of police action. The contention of the learned Advocate for the petitioner that the order of the learned Metropolitan Magistrate dated May 17, 2022 in Misc Case No. 205 of 2022, was not complied with by the police authorities, does not survive. The order has lost its force. Moreover, the Court is of the view that the petitioner has filed the writ petition to get a protective order with regard to his alleged claim as an occupier of the amalgamated premises No. 25, N.S. Road, Kolkata.

It appears that there was a proceeding under Section 412A of the Kolkata Municipal Corporation Act with regard to the premises in question. The

Hon'ble Apex Court heard the matter and upon making an observation with regard to the accommodation of the tenants in the newly proposed building, directed the Kolkata Municipal Corporation to pass necessary orders by invoking the provisions of Section 412A of the Kolkata Municipal Corporation Act, 1980. The tenants were given a limited time to vacate the premises. The KMC passed the order. Several writ petitions have been filed before this Court by the tenants, challenging the legality of the order of the KMC.

This Court had entertained one such writ petition being WPO/2105/2022 (in the Original Side). The writ petition was entertained only for determination of the issue as to whether the tenants who continued to be in possession in the premises and who had been protected by order of the Hon'ble Apex Court, had been provided for in the proposed building plan or not. It was the specific contention of the KMC that all the tenants had been accommodated in the proposed building. There were 258 tenancies, out of which 201 tenants were found in possession. The Corporation was directed to display the proposed building plan with the list of tenants in the notice board outside the building department of the office of the Corporation at 5, S.N. Banerjee Road, Kolkata, for perusal of all the interested parties. The writ petition was kept pending. The Appellate Side matters which were listed together with the Original Side matter as they arose out of the self-same cause of action were detagged, on the prayer of the petitioners.

Thereafter, the co-ordinate Bench took up the matter. The Assistant Engineer (Civil) and the Executive Engineer (Civil)/Building/Borough-IV & V

KMC, filed a report along with photographs. In the said report, it had been indicated that all the 258 tenancies had been accommodated in the building plan which had been submitted for sanction.

It appears that an order has been passed directing the KMC to sanction the building plan. By order dated June 15, 2022, Her Lordship refused the prayer of the petitioner for interim rehabilitation during the process of demolition of the structure standing at the amalgamated premises No. 25, Netaji Subhas Road. Such order was passed in view of the specific direction of the Hon'ble Apex Court dated August 31, 2021.

It also appears that Her Lordship directed the Corporation to take prompt action for consideration of the proposed building plan. In the writ petition filed by the petitioner being WPA/5606/2022, Her Lordship found the facts to be the same as WPO/2105/2022 and directed that the order as passed by this Court on 18th May, 2022 with certain directions, shall be carried out by the Corporation with regard to the display of the plan. The petitioner now alleges that during the pendency of the challenge of the order passed by the Corporation, the order of demolition had been given effect to. Allegation is that the police authorities failed to protect the petitioner on the basis of the order passed by the learned Metropolitan Magistrate 10th Court, Calcutta in Misc. Case No. 205 of 2022.

It appears that the petitioner approached the police authorities with certain complaints of forceful removal of certain articles. Allegation was made

that some property was stolen. The description and nature of the articles have not been mentioned.

An application under Section 156(3) of the Code of Civil Procedure was filed before the learned Chief Metropolitan Magistrate, Kolkata. The said application was disposed of upon considering the preliminary enquiry conducted by Officer-in-Charge, Hare Street Police Station. It was held that in view of the pendency of the writ petition before the High Court on the self-same cause of action, interference under Section 156[3] Cr. P.C. was not warranted.

Mr. Mitra, learned Senior Advocate appearing on behalf of the respondent no.5 submits that the demolition process had started on the basis of the order passed by the Deputy Chief Engineer (Civil)/Building Department, Kolkata Municipal Corporation under Section 412A of the Kolkata Municipal Corporation Act, 1980. It is submitted that the said order was passed on the basis of the direction of the Hon'ble Apex Court and accordingly the order was carried out. The High Court did not stay the order. The interests of the tenants as per the direction of the Hon'ble Apex Court, were protected. It is further submitted that the petitioner is an occupier.

Mr. Banerjee, learned Senior Standing Counsel, submits that the learned Metropolitan Magistrate had directed that the police authority shall ensure that no one should be dispossessed without an order from the proper forum. Thus, there is no inaction on the part of the police authorities as the demolition was carried out by the Kolkata Municipal Corporation in exercise of

power under Section 412A of the Act and upon a specific order from the Hon'ble Apex Court in this regard.

Having heard the learned counsels for the respective parties, this Court is of the view that if the petitioner has a grievance of being left out from the plan, despite directions of the Hon'ble Apex Court, the remedy of the petitioner, if any, would be before the appropriate Bench having jurisdiction. The writ petition with regard to his challenge to the order passed by KMC under Section 412A is also pending. The failure on the part of the present owner in providing an accommodation to the petitioner in the proposed building and in the plan which is yet to be sanctioned, cannot be a subject matter for consideration either by this Court or by the police authorities. In case there has been violation of the orders of the writ court or the Hon'ble Apex Court, the remedy of the petitioner would be before the appropriate forum.

Under such circumstances, without deciding the right of the petitioner either as an occupier or as a tenant and without deciding on the orders and actions of the Corporation with regard to the demolition, the writ petition is disposed of, leaving the petitioner free to avail of his remedies, if any, before the appropriate fora.

Accordingly, the writ petition is disposed of.

(SHAMPA SARKAR, J.)