

D/L
Item No. 19
29.08.2023
KOLE

MAT 142 of 2023

Subhas Jadav & Ors.

-Vs.-

The Kolkata Municipal Corporation & Ors.

*Ms. Nandini Mitra,
Mr. Sanjay Saha,*

...for the appellants.

*Mr. Alok Kr. Ghosh,
Mr. Swapan Kr. Debnath,*

.... For the KMC.

*Mr. Pradyot Kumar Nandi,
Ms. A. Sen Guha,*

...for the respondent nos. 8 and 9.

The appellants are admittedly occupants of a G+4 storied building at Premises No. 44 Strand Road, PS Barabazar, Kolkata 700007. The appellants actually claim to be tenants of the portions occupied by them. They say that the building in which they are tenants, is in a very bad condition and is a real threat to the safety and security of the occupants of the building as also to the people and property in the vicinity thereof.

The appellants say that they and other occupants of the building had sought permission from Kolkata Municipal Corporation (in short 'the Corporation') to repair the building. Such permission was not granted. With this grievance, some of the occupants of the building had approached a learned Single Judge of this Court in the writ jurisdiction by filing WPA 3392 of 2020, praying for a direction on the Corporation to allow them to repair the

building or to take other steps for the safety of the occupants of the building.

In that writ petition before the learned Single Judge, the Corporation submitted that the building is in a ruinous condition. The Department has served notices under Section 411 of the KMC Act, 1980, requiring the owners and/or occupiers of the building to carry out necessary repairs immediately. A notice has already been issued declaring the building as “dangerous building”.

The learned Judge noted that the Corporation had taken necessary steps in the matter. Accordingly, the learned Judge disposed of the writ petition by observing that the noticees were to act in accordance with the notices issued by the Corporation, in default, the Corporation would be entitled to take further steps in accordance with law.

The writ petitioners in that writ application, being aggrieved by the aforesaid order, came up before a Coordinate Bench by filing an appeal being MAT 799 of 2021. The Division Bench did not interfere with the order. The appeal was disposed of with the following observations:-

“We find absolutely no infirmity in the order under appeal. If the concerned building is in a dangerous condition, the same needs to be repaired urgently. The Corporation has issued requisite notices. The Corporation, we are sure, will take appropriate steps to see that no untoward incident happens because of the dangerous condition of the building.

The appellants say that they are prepared to carry out necessary repairs at their own cost. They will be at liberty to do so under the supervision of any empanelled structural engineer, at their own cost. We make it clear that in view of the notice under Section 411 of the Kolkata Municipal

Corporation Act issued by the Corporation, the occupiers not only have the liberty, but the duty to carry out such repairs and this order shall not be construed as any kind of direction on the occupiers to carry out the repairs. needless to say, under the garb of repairing the building, the appellants shall in no manner change the nature and character of the building. The owners of the building shall fully cooperate with the appellants insofar as the repairing work is concerned”.

It appears that the Corporation used to run a school on the 3rd floor of the building in question. That floor, it is alleged, is in a dilapidated condition. The writ petitioners in the present round of litigation approached the learned Single Judge by filing WPA 8741 of 2022, primarily for a direction on the Corporation to repair the 3rd floor of the building. On that writ petition an order dated September 19, 2022 was passed by the learned Single Judge directing the Corporation School Authority to take steps for repairing the portion occupied by the School on the 3rd floor of the building and to file a report before the Court.

Subsequently, the learned Judge passed another order dated November 24, 2022, directing the Director General (Civil) and Director General (Building) of the Corporation to file separate reports before the court regarding the contention raised by the writ petitioners. Both the said officers conducted local inspection and the Director General (Building) filed a report before the learned Single Judge on the day the matter was taken up for final disposal. The Director General (Civil) filed a one page report adopting the report of the Director General (Building).

The learned Judge noted the contents of the Report to the effect that the building is in a dangerous condition and not repairable. The operative portion of the said report reads as follows:-

“On inspection it was found and observed that certain occupiers undertook repairing work in haphazard manner. Although the KMC is a tenant in respect of the 3rd floor of the building, the KMC has not been using the portion of the building under tenancy for running the primary school there from particularly because of its reinous stage to avoid any fatality. As per our findings/observations the building in question cannot be structurally strengthened even after undertaking through repairing works. As a matter of fact over all repairing works cannot be undertaken because of its present status.

Under discussion over the present condition and status of the building it has been decided to invoke the provisions of section 412A of the Kolkata Municipal corporation 1980. The proposal in this regard as made was duly approved by the Deputy Chief Engineer (Civil) North on 06.12.2022. It has now been decided as a consequence of the said discussion to issue notice both to the owners and occupiers with an intention that the KMC is proposed to declare the building as condemned under the provisions of the section 412A of the Kolkata Municipal Corporation Act, 1980.

The follow up actions will be taken accordingly. Copies of the relevant papers and documents including notice and photos are enclosed herewith.”

Having considered the aforesaid report the learned Single Judge disposed of the writ petition with the following observations:-

“The building was constructed more than 100 years back. Several additions, alterations took place without proper planning. Superficial repairing works had been done in different times without considering the structural stability of the building. The portion of the building in

which the Kolkata Municipal Corporation is a tenant in the third floor is not in use because of the ruinous condition of the building.

The Corporation has decided to invoke Section 412A of the Act and proposal in this regard has been made and approved by the Deputy Chief Engineer (C), North on December 6, 2022. As a consequence thereof the notice to owners and occupiers of the building will be issued declaring the building as condemned under the provisions of Section 412A of the Act.

From the aforesaid it appears that the structural stability of the building is such that the same cannot be restored even after repairing.

Accordingly, the Corporation is directed to take prompt necessary steps to take the follow up actions consequent to invocation of Section 412A of the Act and ensure that the inmates of the building are removed at the earliest to avoid loss of valuable life and property”.

Being aggrieved, the writ petitioners are before us by way of this appeal.

At the time when the appeal came up for admission, it was submitted on behalf of the writ petitioners/appellants that the report of the Director General (Building) is not a reliable one since the same was prepared after a superficial visual inspection of the premises in question. No technical method was employed. The appellants requested this Court to appoint an independent engineer for inspecting the concerned premises and filing a report in this court regarding the structural stability and the general condition of the building in question and whether the building is reparable.

This Court had appointed Sri Puranjoy Konar, Chartered Engineer & Valuer, empanelled with this Court, to inspect the building in question and submit a report. Sri Konar obtained our permission to take the assistance of the Engineering Department of Jadavpur University. Accordingly, the entire inspection work was done under the guidance of Dr. Partha Ghosh, Professor, Construction Engineering Department, Jadavpur University. Although Sri Konar has filed a report, a more detailed report has been filed by Dr. Partha Ghosh.

Relying on the report of Dr. Partha Ghosh, Ms. Mitra, learned Advocate representing the appellants, vociferously argued that the building in question need not be dismantled. It is not in such a condition that it is not repairable. The report of Dr. Ghosh categorically says that the building is repairable although the costs may be very high. If the building is demolished, the appellants will be gravely prejudiced as their business will stop. Such business is their only means of livelihood. It is a question of survival.

We have gone through the report of Dr. Ghosh. It is highly technical in nature and mostly beyond our comprehension.

Mr. Ghosh, learned Senior Counsel representing the Corporation says that his instructing engineers have also gone through the report of Dr. Ghosh. The nature and extent of repairs that will be necessary if Dr. Ghosh's recommendation is to be followed, would really amount to reconstruction for which due sanction would have to be obtained from the Corporation Authorities. However, Mr.

Ghosh stuck to the Corporation's stand that the building in question is not in a repairable state.

We have given our anxious consideration to the rival contentions of the parties. While we appreciate the anxiety of the appellants that their means of livelihood will be jeopardized if the building in question is demolished, we have to give equal, if not, more importance to the safety and security of life and property in and in the vicinity of the building in question. This Court is not an expert body. According to the statutory civic body which is entrusted with the duty to ensure that buildings in Kolkata are maintained in a safe condition, the building in question is in a ruinous state and has been declared to be a condemned one. The Corporation intends to take steps in accordance with law to ensure that no untoward incident happens. We must ultimately leave the final decision to the wisdom of the Corporation. However, before such final decision is taken, due opportunity of hearing should be given to the persons who are likely to be affected if the building in question is brought down.

Accordingly, we direct the Commissioner, KMC, to initiate requisite proceedings whether pursuant to Section 412A or any other relevant provisions of KMC Act, 1980, within seven days of communication of this order by the Registrar General of our Court to the Commissioner, KMC, and conclude such proceedings as expeditiously as possible. We express this sense of urgency because according to the Corporation the building is in a dangerous state and may collapse at any point of time. We make it clear that the

Commissioner will be at liberty to take the assistance of such officers of the Corporation as he may deem necessary to conduct the proceedings. The report of Dr. Ghosh and the report of Mr. Konar shall also be considered by the Corporation.

We direct the landlords being the respondent nos. 8 and 9 to actively participate in the proceedings before the Commissioner. If the decision of the Commissioner is that the building must be demolished, due provision for lawful tenants of the building must be made. The respondent nos. 8 and 9 shall ensure that the present lawful occupants are provided alternative accommodation during the period of demolition and re-construction of the building in question, if such occasion arises. The respondent nos. 8 and 9 (landlords) shall also rehabilitate the present lawful occupants of the building in question in the new building if the present building is demolished and a new building is constructed. Naturally, the question of relocating or rehabilitating the present lawful occupants will not arise if the decision of the Commissioner is that the building need not be demolished and can be repaired.

We clarify that in addition to the appellants herein, those occupants of the building in question whose names appear in the records of the Corporation shall be given notice of hearing before the Commissioner.

Needless to say, further necessary action will be taken by the Commissioner by the Corporation depending on the decision of the Commissioner. Such decision, which will be a reasoned one, shall be taken, uninfluenced by any

observation in the order impugned in this appeal or in this order.

The appeal is, accordingly, disposed of.

Urgent photostat certified copy of this order be supplied to the parties, if applied for, as early as possible.

(Arijit Banerjee, J.)

(Apurba Sinha Ray, J.)