

Item No.14

In The High Court At Calcutta
Constitutional Writ Jurisdiction
(via video conference)

17.01.2023
Ct-24

WPA 17517 of 2022

Arobinda Das

v.

Government of West Bengal, Department of Urban
Development & Municipal Affairs & Ors.

Mr. Uday Sankar Chattopadhyay

Mr. Suman Sankar Chatterjee

Mr. Debdipto Banerjee

Ms. Trisha Rakshit

... for the petitioner.

Ms. Sweta Mukherjee

Mr. Ratul Das

... for the State.

Mr. Barin Banerjee

Ms. Sima Chakraborty

... for KMC.

The petitioner is aggrieved by the notice dated May 2, 2022 issued under Section 411(1) of the Kolkata Municipal Corporation Act, 1980.

On a perusal of the said notice it appears that the same was issued by the Executive Engineer(C)/Building Department, Kolkata Municipal Corporation, Borough-I addressed to the owner/occupier of the premises no. 89 B.T. Road, Ward No. 5.

By the said notice the Executive Engineer requested the owner/occupier to demolish the dangerous portion which is not repairable, to secure the repairable portion. All works must be done under strict

supervision of experienced ESE of Kolkata Municipal Corporation without changing the character and dimension of the building.

The petitioner claims to be a tenant in respect of the said property.

According to the petitioner, the notice is bad as the same could not have been issued by the Executive Engineer (C) as according to the provisions of law it is the Municipal Commissioner who can issue such a notice.

Further challenge of the petitioner is that the landlord, in connivance with the men and agents of the Kolkata Municipal Corporation, got the said notice to be issued with the intention to demolish the structure and to evict the petitioner from the tenanted premises without adhering to the provisions of law.

Reference has been made to an order passed by the learned Civil Judge (Senior Division), 1st Court at Barasat, North 24-Parganas in TS No. 434 of 2017 where the Court directed both the parties to maintain status quo in respect of the suit property and not to change the nature, character and ownership and possession of the same.

Learned advocate representing the Corporation submits, upon instruction that, the building in question is an insecure one. The department caused an inspection of the subject premises and found that it is a very old two storied brick built structure with several cracks and trees with deep roots into the walls of the building. The building is not maintained at all. A caution board under Section 411(2) of the Act has been affixed to

make aware of the condition of the building to the occupiers as well as the public in general to avoid any untoward incident.

I have heard the submissions made on behalf of the parties. It appears from the cause title of the writ petition that the landlord of the premises in question has not been impleaded as party respondent.

The notice under Section 411(1) clearly mentions that the owner/occupier is required by the Municipal Commissioner to take steps within seven days to demolish the dangerous portion and to secure the repairable portion. No order has been passed for demolishing the entire structure as alleged or at all. The works in terms of the impugned notice is to be done under the strict supervision of the experienced empanelled structural engineer of the Corporation without changing the character and dimension of the building. The said condition in the notice is in line with the order passed by the learned Civil Judge.

As regards the authority of the Executive Engineer to issue the impugned notice, the said engineer is duly authorized by the Municipal Commissioner to issue the same and the Executive Engineer acted as an authorized delegate of the Municipal Commissioner. It does not appear that the Executive Engineer issued the notice without any jurisdiction as alleged by the petitioner.

In view of the above, there is no requirement to interfere with the notice impugned.

No relief can be granted to the petitioner in the instant writ petition.

The writ petition fails and is hereby dismissed.

Supplementary affidavit, affidavit-of-service and the instruction given by the Executive Engineer (C), Building Department, Borough-I dated January 16, 2023 be retained with the records.

Urgent certified photocopy of this order, if applied for, be supplied to the parties expeditiously on compliance of usual legal formalities.

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(Amrita Sinha, J.)