

W.P.A. 22114 of 2018

IA No. CAN 3 of 2023

Md. Wakil Razzaque & Ors.

Vs.

The Kolkata Municipal Corporation & Ors.

Mr. Aniruddha Chatterjee

Mr. Kushal Chatterjee

Mr. Oishik Chatterjee

Mr. Abid Jamal

...for the petitioners

Mr. Swapan Kumar Debnath

Mr. Gopal Ch. Das

...for the KMC

The writ petition is finally taken up for consideration pursuant to the order dated 15th September, 2023 when a report signed by the Executive Engineer (Civil)/Building, Borough No.-IV & V on 11th October, 2023 enclosing notice dated 5th October, 2023 issued to the petitioners and attendance sheet dated 9th October, 2023 as well as the sketch plan is filed before this Court which is taken on record.

The learned advocate representing the Kolkata Municipal Corporation has indicated the portions which are occupied by the petitioners at 3, Amratala Lane, Ward No. 042, Borough-V.

However, Mr. Aniruddha Chatterjee, learned Counsel representing the petitioners has disputed the demarcation made by the concerned authority of Kolkata Municipal Corporation as depicted in the sketch map which is annexed to the report dated 11th October, 2023

and it has been specifically submitted before this Court on behalf of the petitioners that apart from the demarcated portions in terms of the said sketch map annexed to the report of the Kolkata Municipal Corporation dated 11th October, 2023 other portions of the aforesaid premises are also occupied by the petitioners. In support of such contention the sketch map is filed before this Court on behalf of the petitioners which is also taken on record.

A notice under Section 411 (4) of the Kolkata Municipal Corporation Act, 1980 was issued far back on 2nd March, 2017 wherefrom it appears that the portion of premises no. 3, Amratala Lane, Ward No. 042 was found to be in dilapidated condition and as such the said portion needs to be demolished for the safety of lives and properties of the adjoining premises and public in general. Accordingly, one M/s. Bijoy Kr. Enterprise was engaged as the demolition contractor for the said demolition work as per decision of the concerned authority of Kolkata Municipal Corporation. Such demolition work was to commence on and from 3rd March, 2017. The said notice under Section 411 (4) is under challenge in the present writ petition.

However, after hearing the learned advocates representing the parties it appears that the impugned notice dated 2nd March, 2017 could not be given effect to in view of interim order passed by a coordinate Bench in

this writ petition on 5th November, 2018. On extensive hearing of the parties this Court by passing order dated 15th September, 2023 directed the Executive Engineer (Building) of Kolkata Municipal Corporation to inspect the aforesaid premises on issuing notice to the petitioners and respondent no. 7 with the help of the surveyor of Kolkata Municipal Corporation for demarcating portions of the petitioners presently occupied and to submit a report. A report has been submitted today dated 11th October, 2023 and by taking measurement in presence of the petitioners portions have been indicated in the sketch map which according to corporation are presently occupied by the petitioners. However, dispute has been raised against such report with regard to the demarcation of portions of the petitioners as occupied presently.

As it has already been held in the order dated 15th September, 2023 passed by this Court in this writ petition that the legality of the impugned notice under Section 411 (4) may not be delved into in view of the order passed by a coordinate Bench on 12th December, 2017 in a writ petition being WPA 9154 of 2017, in the said writ petition on the impugned notice under Section 411 (4) dated 2nd March, 2017 following observation was made by the coordinate Bench:-

“Having heard the learned Advocates appearing on behalf of the respective parties as also after considering the provisions contained in Section 411 (4) of the Kolkata Municipal Corporation

Act, 1980 and the other relevant papers placed before me on behalf of the Kolkata Municipal Corporation, I find that there is no illegality in issuing the above notice in question and there is no bar and/or impediment on the part of the respondent Municipal Corporation to proceed on the basis of the above notice in accordance with law, which includes the right of the petitioner for giving an opportunity of hearing provided he is the occupier in any portion of the premises in question.”

In view of the observations made by the coordinate Bench today this Court finds it fit only to consider the right of the petitioners to occupy the portions after reconstruction of the aforesaid building in question by way of rehabilitation. Since on carrying out demarcation procedure certain portions have already been depicted in the sketch map annexed to the report dated 11th October, 2023 of Kolkata Municipal Corporation as occupied presently by the petitioners the concerned authority of Kolkata Municipal Corporation as well as the landlord of the aforesaid premises are directed to handover said portions as per report of the Kolkata Municipal Corporation to the petitioners after completion of reconstruction of the aforesaid building. However, right of the petitioners to claim other portions of the said premises, if the same is occupied presently by them, shall be preserved and after reconstruction of the aforesaid building it will be open to the petitioners to take steps in accordance with law for getting back occupation of other portions of the building upon establishing their right that just before commencement of

demolition work they were having occupation of other portions.

This Court directs the concerned authority of Kolkata Municipal Corporation to give effect to the notice dated 2nd March, 2017 issued under Section 411 (4) and demolish the portions of the building which cannot be preserved on thorough repairing within a period of 6 (six) months from date.

After completion of demolition work on reconstruction of the aforesaid building by the appropriate party, petitioners shall be rehabilitated upon handing over the portions as indicated in the sketch map annexed to the report of Kolkata Municipal Corporation dated 11th October, 2023. On rehabilitation if petitioners are not satisfied, they shall be at liberty to take steps as aforesaid.

This order is passed by this Court taking into consideration another aspect that the aforesaid premises situates at a congested place in Kolkata and the notice under Section 411 (4) was issued far back on 2nd March, 2017, in the meantime more than six years have passed, if the aforesaid premises due to its dilapidated condition collapses, that may lead to accident and loss of lives and properties of the owners and occupiers of the adjoining buildings.

With the aforesaid directions and observations the writ petition stands disposed of.

There shall be no order as to costs.

In view of the order passed in the writ petition application being CAN 3 of 2023 also stands disposed of.

Urgent photostat certified copy of the order, if applied for, be given to the parties, upon usual undertakings.

(Saugata Bhattacharyya, J.)