

12. 19.07.2023
Court No.6
Tanmoy Ghosh

MAT 2080 of 2022

Firdous Khan
-Versus-
Kolkata Municipal Corporation & Ors.

With
IA No: CAN/2/2023
With
IA No: CAN/3/2023

Mr. Syed Shahid Imam, Adv.,
Mr. Md. Khairul, Adv.
...for the appellant.

Mr. Achintya Banerjee, Adv.,
Mr. Swapan Kr. Debnath, Adv.
...for the KMC.

Mr. Jaydip Basu, Adv.
...for the State.

Mr. Varun Kothari, Adv.,
Mr. Bhupendra Gupta, Adv.,
Mr. Hamidul Haque, Adv.
...for the respondent nos. 8 & 9.

Mr. Abdul Hadi, Adv.,
Mr. Md. Ashfaque Ahmed, Adv.
...for the applicants in
IA No: CAN/3/2023/
Intervenors.

Mr. Sutanu Chakrabarti, Adv.
...Special Officer.

By consent of the parties, the appeal and the connected applications are taken up together for hearing.

Let the Special Officer's report dated July 17, 2023, filed in Court today, be kept with the records.

The aforesaid report notes down the names of persons who are in occupation of various portions of the

building in question along with particulars of their Aadhaar cards. The report also mentions the area under occupation of each of the occupants.

There appears to be some controversy as indicated by the Special Officer as to whether or not a few of the occupants occupy portions of the building in question. We are of the view that in the interest of all persons concerned, resolution of such controversy should be deferred and the development work should be carried out expeditiously. This we say because the report of the Engineer which is on record clearly indicates that the building is in a precarious condition.

The interveners, represented by learned Advocate Mr. Abdul Hadi, claim to be owners of the building in question. We enquired of them as to whether or not they were willing to repair the building and/or demolish the same and reconstruct the building. We were categorically told that they are not in a position to do so, as recorded in our order dated May 17, 2023.

Learned Advocate for the respondent nos. 8 and 9 says on instruction that his clients will immediately apply for sanction of a Building Plan for reconstruction of the building in question.

In the aforesaid factual scenario, to protect life and limbs of the occupants of the building in question, we have no choice but to allow the respondent nos. 8 and 9 to undertake the work of demolition and reconstruction

of the building subject to they re-habilitating the present occupants in alternate accommodation for the *interim* period and also subject to they putting back the occupants in proportionate areas in the reconstructed building. The respondent nos. 8 and 9 shall carry out everything that they have stated in their supplementary affidavit affirmed on May 18, 2023, which are to the following effect:-

“... 1. I am the Respondent no. 9 herein and have been duly authorized by the Respondent no. 8 to make and affirm the instant affidavit. I am well conversant with the facts and circumstances of the instant case. I am as such competent to make and affirm the instant affidavit.

2. The Respondent nos. 8 and 9 are lessees of the 7A, Dr. M.N. Chatterjee Sarani, Kolkata – 700009 (hereinafter referred to as ‘the said property’). The said property is in a dilapidated condition as will be evident from the civil engineer’s report dated 20th March, 2023.

3. The Respondent nos. 8 and 9 being the lessees of the said property are ready and willing to demolish the existing structure and rebuild the same at their own cost without prejudice to the rights and contention of the said respondents. The answering respondents are also ready and willing to provide temporary rehabilitation to all the occupants of the said property for the interregnum period till the possession of proportionate area in the new building is handed over to such occupants. The temporary rehabilitation to the occupants shall be reasonably equivalent to the area already being occupied by the occupants presently. The answering respondents are ready and willing to bear all such costs without prejudice to their rights and contentions.

The answering respondents for such demolition and reconstruction of the said premises will require a reasonable period of 42 months. The answering respondents are further ready and willing to give any further undertaking required by this Hon’ble Court. The answering respondents are ready and willing to comply with any order and/or direction passed by this Hon’ble Court. ...”

It is made clear that this order is being passed without prejudice to the rights and contentions of the parties in any other legal proceedings that may be pending in any other forum. It is also made clear the fact that the respondent nos. 8 and 9 will be reconstructing the building in question, shall not create any special equity or special right in their favour.

No useful purpose will be served by keeping the appeal pending. Accordingly, the appeal being MAT 2080 of 2022 along with all connected applications are disposed of.

Let the Special Officer be paid further and final remuneration of Rs.15,000/-, to be paid by the respondent nos. 8 and 9 at the first instance, within a week from date. Subject to receiving such payment, the Special Officer shall stand discharged.

Let urgent photostat certified copy of this order, if applied for, be made available to the parties upon compliance with all requisite formalities.

(Arijit Banerjee, J.)

(Apurba Sinha Ray, J.)