

OD-4

ORDER SHEET

WPO No. 567 of 2022

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
ORIGINAL SIDE

SRI NARAYAN CHANDRA SINGHA AND ORS.
Versus
THE STATE OF WEST BENGAL & ORS.

BEFORE:

The Hon'ble JUSTICE SAUGATA BHATTACHARYYA

Date : 1st February, 2023

Appearance :

Mr. P.S. Deb Barman, Adv.
Mr. Amit Gupta, Adv.
Mr. S. Alam, Adv.
For the petitioners.

Mr. Biswarup Biswas, Adv.
Md. Mojnu Sk., Adv.
Mr. Lutful Haque, Adv.
For the respondent nos. 7 and 8.

Mr. Gautam Banerjee, Adv.
For the respondent no.10.

Mr. Arindam Banerjee, Adv.
Mr. T.K. Dey, Adv.
For the respondent no.12.

Mr. Tapan Coomaar Dey, Adv.
Ms. Manisha Nath, Adv.
For the K.M.C.

The Court:- Affidavit-in-Reply filed on behalf of the petitioners is taken on record.

Three tenants of 26, Buddhu Ostagar Lane, Kolkata – 700009, have presented this writ petition, inter alia, challenging the sanctioned

plan accorded by the concerned authority of Kolkata Municipal Corporation (KMC) on the ground that under Rule 142 of Kolkata Municipal Corporation Building Rules, 2009 for availing relaxation under sub-Rule 1 of Rule 142 the application seeking sanctioned plan has to be accompanied with documentary evidence of the tenants of the existing building signifying their consent to the demolition thereof. Petitioners have made out a specific case that impugned sanctioned plan dated 5th October, 2021 was accorded by the authorities of KMC without complying the provisions as contained under Rule 142[3] of Kolkata Municipal Corporation Building Rules, 2009. It has also been apprised by Mr. Partha Sarathi Deb Barman, learned Advocate representing the petitioners that the present writ petition has been instituted by three tenants out of total ten.

Mr. Arindam Banerjee, learned Counsel representing the private respondents in effect is appearing on behalf of three tenants. Therefore, it appears that out of total ten tenants six tenants are before this Court, three are writ petitioners and three are private respondents.

Mr. Banerjee representing three tenants (private respondents) has also supported the contention of the petitioners and echoed the submission made on behalf of the petitioners that without obtaining necessary consent as contemplated under Rule 142[3] of the Rules of 2009 sanctioned plan has been accorded in favour of developer and owner being respondent nos. 7,8,9 and 10. It has also been submitted on behalf of the tenants before this Court that in pursuit of procuring

sanctioned plan under Rule 142 documents containing forged signature of the tenants have been submitted before the concerned authority of KMC, glaring example is case of Ganesh Chandra Basak who died on 31st December, 2009 whereas declaration of said Ganesh Chandra Basak along with self attested electricity bill were submitted before the authority of KMC in order to obtain sanctioned plan which has subsequently been accorded on 5th October, 2021. According to the tenants, the said sanctioned plan dated 5th October, 2021 cannot survive in view of gross violation of requirement as contemplated under Rule 142[3].

Mr. Tapan Coomaar Dey, learned Advocate represents the Kolkata Municipal Corporation who during course of hearing has drawn attention of this Court to the notice dated 11th January, 2022 issued by the Executive Engineer (Civil) Building Department whereby the developer has been asked not to make further construction including demolition work pursuant to the said sanctioned plan dated 5th October, 2021.

Mr. Biswarup Biswas, learned Advocate appearing on behalf of the respondent nos. 7, 8 and 9 has made faint attempt to substantiate the steps taken by the developer in obtaining sanctioned plan from the concerned authority of KMC. This Court has made a query to Mr. Biswas as to how the tenant, namely Ganesh Chandra Basak who died on 31st December, 2009 furnished consent as well as self attested document in the year 2021 which facilitated the developer to obtain sanctioned plan.

Being confronted with such query satisfactory answer could not be elicited from the respondent nos. 7,8 and 9.

Concerned official of KMC is present before this Court with original records.

Having considered the submissions made on behalf of the petitioners as well as the respondent tenants and also taking into consideration the stand taken before this Court on behalf of the respondent nos. 7, 8 and 9 it appears that sanctioned plan dated 5th October, 2021 was accorded by the concerned authority of KMC without following the prescription of law as contained under Section 142[3] of the Kolkata Municipal Corporation Building Rules, 2009. Specific case has been made on behalf of six tenants who are represented before this Court through their respective learned Advocates that those six tenants have not given consent for grant of sanctioned plan. In addition thereto it appears that the developer/land owner has furnished declaration of one Ganesh Chandra Basak containing signature of said Ganesh Chandra Basak who appears to have died on 31st December, 2009. In support of this fact original documents have been placed before this Court by the learned Advocate representing the KMC. From the original death certificate of Ganesh Chandra Basak it appears that he died on 31st December, 2009 whereas self attested electricity bill and declaration containing signature of Ganesh Chandra Basak were submitted much after his death in the year 2020-2021. Such fact goes to show that the developer produced documents containing forged signature of Ganesh

Chandra Basak in order to obtain sanctioned plan from Kolkata Municipal Corporation. Copies of death certificate of Ganesh Chandra Basak as well as declaration and self attested electricity bill containing signature of said Ganesh Chandra Basak are taken on record. The original records including death certificate of Ganesh Chandra Basak produced before this Court today are returned to the learned Advocate Mr. Tapan Coomaar Dey representing the KMC.

In view of aforesaid scenario, it appears that on mis-representation and fraud at the instance of the developer concerned authority of KMC issued impugned sanctioned plan dated 5th October, 2021. Therefore, the said impugned sanctioned plan dated 5th October, 2021 stands set aside.

Accordingly, the writ petition is allowed.

There shall be no order as to costs.

Urgent xerox certified copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(SAUGATA BHATTACHARYYA, J.)