

OD-3

ORDER SHEET

WPO No.861 of 2023
IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
ORIGINAL SIDE

SARABINDU PATTANAYAK
VS.
THE KOLKATA MUNICIPAL CORPORATION & ORS.

BEFORE:

The Hon'ble JUSTICE AMRITA SINHA

Date:24th April, 2023.

Appearance:
Mr. Raghunath Chakraborty, Adv.
Mr. Supratik Shyamal, Adv.
Ms. Sonali Sengupta, Adv.
..for the Petitioner.

Mr. Gurudas Mitra, Adv.
Ms. Suranjana De Sarkar, Adv.
..for KMC.

Mr. Aniruddha Chatterjee, Adv.
Mr. Rahul Karmakar, Adv.
Mr. Sounak Mukherjee, Adv.
..for Respondent Nos. 6 & 7.

The Court:- The petitioner apprehends that his tenancy right may be extinguished if the structure in question where he claims tenancy is demolished by the landlords/private respondents. The petitioner has been successful in obtaining an order from the learned Second Bench, City Civil Court at Kolkata in Title Suit No. 649 of 2023 on 31.03.2023 restraining the landlords/private respondents from forcibly entering into the tenanted portion of the suit scheduled premises and/or demolishing it in any manner whatsoever. The landlords/private respondents have been further restrained from evicting the petitioner forcefully from possession.

Learned advocate representing the Kolkata Municipal Corporation has produced the instruction forwarded by the Assistant Engineer and the Executive Engineer (Civil)/ Building Department, Borough-II, Kolkata Municipal

Corporation signed on 16.04.2023 respectively mentioning that the premises No.170A, Bidhan Sarani, 170B, Bidhan Sarani, 171A, Bidhan Sarani, 171B, Bidhan Sarani, Kolkata-700006 stood amalgamated and has been renumbered as 171A, Bidhan Sarani, Ward No.17, Kolkata-700006.

Considering the dilapidated condition of the premises, the Kolkata Municipal Corporation issued notice under Section 411(1) of the Kolkata Municipal Corporation Act, 1980 in the year 2019 and a caution board of 'dangerous building' was served as per Section 411(2) of the K.M.C. Act, 1980. The dilapidated portion of the building was demolished by the Building department, Borough-II of the Kolkata Municipal Corporation after passing necessary orders.

The landlords/private respondents forwarded a plan proposal for construction of G+III storied building and the same has been sanctioned in February, 2023 and the existing structure was proposed to be demolished.

Mr. Santi Nath Manna, applicant for the plan proposal submitted a written declaration for non eviction of the tenants prior to sanction. The landlords have undertaken that if the existing tenants/occupiers are not reinstated in the newly constructed building, then the plan may be cancelled/ revoked by the Kolkata Municipal Corporation. However, neither the tenanted portion has been shown in the plan proposal nor any advantage of obtaining extra floor area ratio has been sought in the plan proposal.

Learned advocate representing the private respondents i.e. the landlords of the subject premises submits, upon instruction that, the petitioner is a rank trespasser and encroacher of the property. The landlords deny the status of the

petitioner as tenant. The petitioner claims that the inspection book of the Kolkata Municipal Corporation records the name of the petitioner as tenant of the subject premises.

It appears from the submissions made on behalf of all the parties that the private respondents, prior to obtaining the sanctioned plan, filed an undertaking before the Kolkata Municipal Corporation to reinstate any tenant at the subject premises.

Status of the petitioner as tenant has been denied. The petitioner has filed a Suit before the learned Court below and has obtained an order of injunction. Status of the petitioner as tenant will be decided by the learned Court below in the Suit that is pending consideration. The landlords will be bound to obey the undertaking given by them before the Kolkata Municipal Corporation at the time of obtaining sanction of the plan proposal.

Writ petition stands disposed of.

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

(AMRITA SINHA, J.)