

OD-4

WPO No.1128 of 2023
IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
ORIGINAL SIDE

KALINATH DUTT
VERSUS
KOLKATA MUNICIPAL CORPORATION & ORS.

BEFORE :
THE HON'BLE JUSTICE AMRITA SINHA
Date : 17th May, 2023.

Appearance:

*Mr. Saptangshu Basu, Sr. Adv.
Mr. Raghunath Chakraborty, Adv.
Mr. Dwaipayana Mitra, Adv.
Mr. Subhasish Chakraborty, Adv.
Mr. Rajdeep Bhattacharya, Adv.
...for the petitioner.*

*Mr. Biswajit Mukherjee, Adv.
Mr. Debangshu Mondal, Adv.
...for the KMC.*

*Mr. Alak Kr. Ghosh, Adv.
Mr. Arindam Banerjee, Adv.
Ms. S. Bala, Adv.
..for the Respondent Nos. 7 & 8.*

*Mr. Manoj Kumar Malhotra, Adv.
Mr. Sabyasachi Mondal, Adv.
... For the State.*

The Court :-The order dated 16.02.2023 passed by the Special Municipal Commissioner of the Kolkata Municipal Corporation allegedly in compliance of the direction passed by the Court in WPO No. 2642 of 2022 (Kalinath Dutt VS. Kolkata Municipal Corporation & Ors.) is impugned in the present writ petition.

The matter relates to premises no.4, Narendra Sen Square, P.S. - Amherst Street, Kolkata-700009, Ward No.40, Borough-V of the Kolkata Municipal Corporation.

The Court in the earlier writ petition directed the respondent authority to consider the representation filed by the petitioner. Upon consideration, the Special Municipal Commissioner of the Kolkata Municipal Corporation rejected the contention

of the petitioner. The said order was passed after giving reasonable opportunity of hearing to all the necessary parties.

According to the petitioner, the Special Municipal Commissioner of the Kolkata Municipal Corporation failed to appreciate the contents of the two declarations filed by the private respondents by declaring the names of the tenants in the subject premises.

The petitioner contends that the names of all the tenants are not recorded in the inspection book maintained by the Kolkata Municipal Corporation. The building in question is in a dilapidated and ruinous condition. There was no scope to induct new tenant in such a dilapidated building. Only for obtaining maximum floor area ratio by availing the benefit under Rule 142 of the Kolkata Municipal Corporation Building Rules, 2009, the private respondents prepared false documents of tenancy. The petitioner specifically states that fictitious persons have been shown as tenants in the subject premises solely to obtain extra floor area ratio.

Provision of Section 411 of the Kolkata Municipal Corporation Act has been placed. Both the declarations given by the private respondents have also been placed in Court.

Upon perusal of all the aforesaid documents and upon hearing the submissions made on behalf of all the parties, it appears that the petitioner is stretching the argument a bit too far. None of the tenants have raised any objection before the Kolkata Municipal Corporation alleging eviction without due process of law or alleging non allotment of equivalent space in the proposed construction.

Petitioner being a neighbour of the subject premises ought not to raise an issue with regard to the number of tenants that may be inducted in the subject premises. It is always for the landlord to take a decision as to how many tenants will be inducted in the subject premises and the area of tenancy to be allotted to them.

It appears that the private respondents filed two declarations giving details of the tenants and have obtained maximum floor area ratio by availing benefit under Rule 142 of the Kolkata Municipal Corporation Building Rules, 2009.

The Court does not find that the Special Municipal Commissioner of the Kolkata Municipal Corporation acted in any manner not permissible in law. The order impugned is not liable to be interfered with.

The writ petition stands dismissed.

Affidavit of service filed in Court today is taken on record.

Report filed by the Officer-in-Charge of Amherst Street Police Station signed on 17th May, 2023 be retained with records.

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

(AMRITA SINHA, J.)

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