

OD-4

ORDER SHEET

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
ORIGINAL SIDE

WPO/1225/2023

M/S MULTIBUILD PROPERTIES PVT LTD.
VS
THE KOLKATA MUNICIPAL CORPORATION AND ORS

BEFORE:
The Hon'ble JUSTICE BIBEK CHAUDHURI
Date : 25th May, 2023.

[VACATION BENCH]

Appearance:

Mr. R. N. Chakraborty, Adv.
Mr. S. Shyamal, Adv.
Ms. Sonali Sengupta, Adv.
...for the petitioner

Mr. Gopal Chandra Das, Adv.
Mr. Dwijadas Chakraborty, Adv.
...for KMC

The Court :- This is third round of litigation against the Kolkata Municipal Corporation at the instance of the petitioner/company. The dispute between the parties arises on the issue of demolition of some unauthorized construction allegedly made by the petitioner over the disputed building. Previously, the petitioner was served with a notice under Section 412(2) of the Kolkata Municipal Corporation (KMC) Act. The said notice was challenged before a co-ordinate Bench by filing WPO/807/2023. The co-ordinate Bench vide order

dated 4th April, 2023 disposed of the said writ petition with certain directions which will be quoted in the instant judgment at the relevant place.

Section 412 of the KMC Act speaks of the power of the Municipal Commissioner to order a building to be vacated in certain circumstances. The Section runs thus:

“412. Power to order building to be vacated in certain circumstances:-

- (1) The Municipal Commissioner may, by order in writing, direct that any building, which in his opinion is in a dangerous condition or is not provided with sufficient means of egress in case of fire or is occupied in contravention of section 396 or section 403, be vacated forthwith or within such period as may be specified in the order:*

Provided that at the time of making such order, the Municipal Commissioner shall record a brief statement of the reasons therefor.

- (2) If any person fails to vacate the building in pursuance of such order, the Municipal Commissioner may direct any police officer to remove such person from the building and the police officer shall comply with such direction.*
- (3) The Municipal Commissioner shall, on the application of any person who has vacated or has been removed from any building in pursuance of any order or any direction, as the case may be, under this section, reinstate such person in the building as soon as the circumstances permit.”*

In the order dated 4th April, 2023, Hon’ble Amrita Sinha, J. observed as hereunder :

“According to Section 412(1) of the Kolkata Municipal Corporation Act, 1980, the Municipal Commissioner may, by order in writing, direct that any building, which in his opinion is in a dangerous condition or is not provided with sufficient means of egress in case of fire or is occupied in contravention of Section 396 or Section 403, be vacated forthwith or within such period as may be specified in the order.

Section 412(2) lays down that if any person fails to vacate the building in pursuance of such order, the Municipal Commissioner may direct any

police officer to remove such person from the building and the police officer shall comply with such direction.

In the present case, there is nothing on record to show that an order was issued by the Municipal Commissioner under Section 412(1) of the Act. Without the order by the Municipal Commissioner directing the building to be vacated, subsequent notice under Section 412(2) cannot be issued.

The order under Section 400(1) of the Kolkata Municipal Corporation Act, 1980 specifies the infringement made at the time of raising construction. The same is under scrutiny before the learned Municipal Building Tribunal. If the structure in question is demolished prior to a decision being taken by the appellate authority, the appeal itself will be rendered infructuous and the petitioner will remain remediless.

The petitioner has averred in the writ petition that the appeal was preferred before the learned Tribunal on 23.03.2023 along with an application for stay and application for condonation of delay. The same has been registered as B.T. Appeal No.77 of 2023 and 20.04.2023 is the date fixed for filing the service return.”

It is submitted by the learned advocate for the petitioner that though the above order is clearly explicit with regard to service of notice under Section 412(1) of the KMC Act as a condition precedent to service of notice under Section 412 (2) of the said Act, the respondent authority issued a further notice under Section 412(2) of the KMC Act with a stipulation that the alleged unauthorized construction would be demolished on 29th May, 2023.

It is also submitted by the learned advocate for the petitioner that as per direction made by the Hon’ble Judge in the aforesaid writ petition, the petitioner has already preferred an appeal before the Municipal Tribunal and the said appeal is pending. It was observed by this Court vide order dated 4th April, 2023

that if additional construction of the building is demolished, the appeal filed by the petitioner will be infructuous. In spite of such observation, the respondent authority has issued further notice under Section 412(2) of the KMC Act to demolish the building after taking necessary measures for vacating of the said premises at their instance.

Learned counsel for the Kolkata Municipal Corporation on the other hand draws my attention to running page 3 of the judgment of WPO/807/2023 where the Hon'ble Judge observed :-

“Be that as it may, as it appears that the learned Municipal Building Tribunal has already fixed 20.04.2023 as the date for service return, accordingly, the Executive Engineer (Building), Borough-II, Kolkata Municipal Corporation is restrained from giving any effect or further effect to the impugned notice dated 01.04.2023 under Sections 544 & 546 of the Kolkata Municipal Corporation Act and further notice under Section 412(2) of the Kolkata Municipal Corporation Act, 1980 till 19.05.2023 or until further order, whichever is earlier.”

Thus, it is submitted by the learned counsel that the KMC was restrained till 19th May, 2023 and subsequent to such date the KMC has every right and authority to issue similar notices to the petitioner for demolition of the building.

Having heard learned counsel for the parties, this Court is of the view that before service of notice under sub-section (2) of Section 412 of the Kolkata Municipal Corporation Act, it is the duty of the Municipal Commissioner to serve a notice to the owner / occupier of the building to vacate the said building forthwith. Till this date, the owner/occupier of the building has not been given

an opportunity by notice to vacate the said unauthorized part of the said building by the Municipal Commissioner.

Action of forcible eviction can only be adopted under sub-section (2) of Section 412 of the said Act when the owner/occupier of the building refuses to vacate the premises. Without giving an opportunity to the owner and occupier, the KMC directly issued notice under Section 412(2) of the said Act which was found to be in accordance with the statute in WPO/807/2023.

Recurrence of the same civil wrong has been done by the Kolkata Municipal Corporation. Moreover the appeal is pending at the instance of the petitioner.

In view of such circumstances, the Building Tribunal is directed to dispose of the application, if any, filed in connection with the appeal within one month from the date of communication of this order. Till that date, no coercive steps shall be taken by the KMC.

The Kolkata Municipal Corporation is at liberty to take action first under Section 412(1) of the KMC Act and then under Section 412(2) of the KMC Act immediately after disposal of the application for stay, if the order goes in favour of KMC.

(BIBEK CHAUDHURI, J.)