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ORDER SHEET
WPO No.1296 of 2023
IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
ORIGINAL SIDE

KESHAV KUMAR DUBEY & ANR.
-Versus-
THE KOLKATA MUNICIPAL CORPORATION & ORS.

BEFORE:
The Hon'ble JUSTICE AMRITA SINHA
Date: 5th July, 2023.

Appearance:
Mr. Nirmalya Dasgupta, Adv.
Mr. Rajesh Upadhyay, Adv.
Ms. Surabit Biswas, Adv.
...for Petitioners.

Mr. Barin Banerjee, Adv.
Ms. Sima Chakraborty, Adv.
...for KMC.

Ms. Parna Roychoudhury, Adv.
Ms. Shilpa Thapa, Adv.
...for State-Respondent.

Mr. Arindam Banerjee, Adv.
Ms. Manisha Nath, Adv.
Mr. M. S. Tiwari, Adv.
...for Respondent No.8.

The Court:-The matter relates to the premises no.14, Madan Chatterjee Lane, Ward No.41, Borough-V under jurisdiction of the Kolkata Municipal Corporation.

The petitioners claim to be the tenants of the subject premises. The private respondent No. 8 happens to be the developer of the property in question. In support of their tenancy, the petitioners rely upon the deed of conveyance dated 30th September, 2008 where the names of the petitioners are appearing as tenants of the subject property.

The petitioners state that the private respondent has demolished the property in question and is raising a new construction without providing any rehabilitation to them.

The petitioners try to make out a case that the sanctioned plan was obtained upon practicing misrepresentation and fraud. Objection was filed before the Kolkata Municipal Corporation seeking cancellation of the said

sanctioned plan. As there is no response from the Corporation, the present writ petition has been filed.

Learned advocate representing the private respondent submits, upon instructions that, though initially the petitioners were in possession as occupants of the said premises but later on they moved out from the same. In support of the said submission, the private respondent refers to the averments made by the petitioners in paragraphs 18, 23 and 24 of the writ petition wherein the petitioners have mentioned that the petitioner no.2 was previously residing at the subject premises, but presently he shifted to Mumbai, Maharashtra, which is evident from his Aadhaar Card.

It has also been averred that the petitioners were given to understand if they vacate the said premises, the private respondent will construct a new building and hand over respective possession to the petitioners according to their entitlements.

It has further been averred that the petitioners have been given to understand that the petitioners have been fraudulently made to vacate the said premises under false assurance that the private respondent will hand over the requisite areas to the said petitioners in the newly constructed building. However, very recently the petitioners have been given to understand that no such areas will be handed over to the petitioners.

It has been submitted by the learned advocate representing the private respondent that the building in question was brought down in the year 2015 and construction started in the year 2021. The private respondent submits that the petitioners do not have any right over the subject property at present.

A report has been filed by the engineers of the Corporation signed on 4th July, 2023. It appears therefrom that sanctioned plan was issued to the private respondent for erection of a B+G+V storied residential building in the year 2015. Subsequently, a modified plan was issued for construction of B+VIII storied residential building in the year 2021. The names of the tenants of each floor were submitted by the party which tally with the names of the tenants mentioned in the sanctioned floor plan. Total number of tenants is 34. All the tenants as per the I.B. record of the Assessment Department were provided accommodation in the sanctioned plan. Tenants have also

submitted their no objection certificate countersigned by the owner during approval of both the sanctioned plans. Presently, the structure has gone up to B+VI storey.

From the submissions made on behalf of the parties, it appears that the very fact of tenancy of the petitioners is denied by the private respondent. Apart from the deed of conveyance executed in the year 2008, there is nothing on record to suggest that the petitioners are the tenants of the subject premises. The petitioners have themselves averred that they have vacated the subject premises on assurance that they would be provided rehabilitation according to their entitlements in the newly constructed building.

The aforesaid submission indicates that the petitioners are not in possession of the subject premises at present. If the petitioners are at all aggrieved by any act of the private respondent in dispossessing them from their tenanted premises by giving false assurance, then it will be open for the petitioners to initiate appropriate proceedings for redressal of their grievances.

Prayer sought for by the petitioners in the present writ petition cannot be allowed.

The writ petition fails and is hereby dismissed.

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

(AMRITA SINHA, J)

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