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ORDER SHEET
WPO No.1306 of 2023
IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
ORIGINAL SIDE

BHANU SONKAR & ANR.
-Versus-
KOLKATA MUNICIPAL CORPORATION & ORS.

BEFORE:
The Hon'ble JUSTICE AMRITA SINHA
Date:27th June, 2023.

Appearance:
Mr. Nilay Sengupta, Adv.
Mr. Sujit Banerjee, Adv.
...for the Petitioners.

Mr. Gurudas Mitra, Adv.
Mr. Jayanta Kr. Dhar, Adv.
...for KMC.

Mr. Srijib Chakraborty, Adv.
Mr. Sumitava Chakraborty, Adv.
...for Respondent Nos.5 & 6.

The Court:- The petitioners are aggrieved by the order dated 10th May, 2023 passed by the Special Municipal Commissioner, Kolkata Municipal Corporation alleging non-compliance of the direction passed by this Court on 17.02.2023 in APOT No.43 of 2023 with WPO No.24 of 2023.

The matter relates to the premises No.12, Goenka Lane, Kolkata-700007 under Ward No.23, Borough-IV of the Kolkata Municipal Corporation.

Special Municipal Commissioner, Kolkata Municipal Corporation was of the opinion that the sanctioned plan granted in favour of the recorded owners will be kept suspended and the suspension shall be revoked or revised by inserting the names of the writ petitioners as occupiers/tenants, as the case may be, on the basis of the final outcome of the title suit.

Special Municipal Commissioner, Kolkata Municipal Corporation was also of the opinion that since the condition of the existing structure is very

old and dilapidated, the private respondents i.e. the owners be allowed to demolish the said dangerous, old and dilapidated structure.

The private respondents submit that they have a right over the subject premises as tenants and accordingly, the portion that they tenants are occupying ought not to be demolished. It has been submitted that the same is not in the dilapidated condition.

Learned advocate representing the private respondents submits that there is already a notice issued under Section 412A of the Kolkata Municipal Corporation Act, 1980 declaring that the building is in a dangerous and condemned condition. It has been submitted that apart from one room in the ground floor and one room in the first floor of the building, the entire structure has been brought down. The petitioners are deliberately and intentionally holding on to this structure even though the petitioners have moved out from the same place. Two rooms have been kept under lock and key. An arm-twisting tactic is being adopted for squeezing money from the landlord.

The private respondents relied upon an order passed by the Hon'ble Division Bench wherein it has been mentioned that the order of the Court will not in any manner stand in the way of the proceedings initiated by notice under Section 412A of the Act to be carried to its logical conclusion or in passing such other order as may be necessary, in accordance with law.

Learned advocate representing the landlord submits that the landlord may be relieved of any responsibility or liability in the event the structure in question collapses causing loss of valuable life and property.

Learned advocate representing the Kolkata Municipal Corporation has obtained instruction from the engineer of the concerned Borough wherein it

has been specifically mentioned that there was a two-storied old and dilapidated building at the captioned premises. Notice under Section 411(1) of the Act was issued to the owners and the occupiers in July, 2021 directing them to secure the dilapidated portion. But neither the owners nor the occupiers took initiative to secure the same.

The department affixed a caution board and thereafter informed the police regarding the dilapidated condition of the building for taking necessary steps to secure the dilapidated building to save human lives. Department served notice under Section 412A of the Act. A hearing took place in the office of the Deputy Chief Engineer (Civil)/Building/North on 16.03.2023 upon intimation to the owners and the tenants. A reasoned order was passed mentioning that the Kolkata Municipal Corporation may cause development work in respect of the dilapidated structure in such transparent manner as may be prescribed by a Scheme of the Kolkata Municipal Corporation.

Consequently, the owners submitted the plan proposal for sanction of building plan under Rule 142 of the Kolkata Municipal Corporation Building Rules, 2009 mentioning the tenants occupied area and the said plan proposal was sanctioned. The sanctioned plan was thereafter kept suspended after giving opportunity of hearing to the petitioner and the landlord.

Copy of the order dated 16th March, 2023 under Section 412 A of the Act has also been placed in Court. A hearing was conducted where all the parties appeared and the tenants/occupiers of the building were directed to vacate the building within thirty days from the date of service of the notice for safety and security of the inmates and public in general.

There was a direction for demolition of the building under supervision of an empanelled structural engineer of the Kolkata Municipal Corporation to avoid any accidental hazards. The owner of the building was directed to give proper rehabilitation to the tenants/occupiers after construction of the new building.

The order passed under Section 412A of the Kolkata Municipal Corporation Act, 1980 has not been challenged by any party. The same has attained finality by now.

It will be open for the parties to act in accordance with the direction passed in the order under Section 412A of the Act.

The Special Municipal Commissioner, Kolkata Municipal Corporation passed impugned order on 10th may, 2023 by holding that the sanctioned plan shall be kept suspended and only revoked and revised by inserting the names of the petitioners as occupiers/tenants, as the case may be.

A title suit appears to be pending in between the parties relating to declaration of the status of the petitioners as tenants.

It appears from the submissions made on behalf of the parties and the records produced before this Court that the structure is very old and dilapidated.

The Special Municipal Commissioner, Kolkata Municipal Corporation has directed the parties to act in accordance with law and in accordance with the notice under Section 412A of the KMC Act, 1980 as per the direction passed by the Hon'ble Division Bench of this Court.

In view of the above, there is no reason to interfere with the impugned order at this stage.

Accordingly, the writ petition fails and is hereby dismissed.

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

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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