

WPO/1351/2023  
[WITH WPA/5978/2023]  
IN THE HIGH COURT AT CALCUTTA  
Constitutional Writ Jurisdiction  
ORIGINAL SIDE

PRITHA NANDY  
VS  
THE STATE OF WEST BENGAL AND ORS

BEFORE:  
The Hon'ble JUSTICE AMRITA SINHA  
Date: 30<sup>th</sup> November, 2023.

*Appearance:*  
*Mr. Raghunath Chakraborty, Adv.*  
*...for the petitioner*

*Ms. Tuli Sinha, Adv.*  
*...for the State*

*Mr. Gurudas Mitra, Adv.*  
*Ms. Suranjana De Sarkar, Adv.*  
*...for the K.M.C.*

*Mr. B. Ghosh, Adv.*  
*Mr. Abhishek Agarwal, Adv.*  
*Mr. Amir Ali, Adv.*  
*...for the respondent no.5*  
*In WPO/1351/2023 & respondent no 10*  
*In WPA/5978/2023*

*Mr. Sumitava Chakraborty, Adv.*  
*...for the respondent no.6 in WPO/1351/2023 &*  
*respondent no.11 in WPA/5978/2023*

*Mr. Haridas Das, Adv.*  
*...for the respondent no.6 in WPA/5978/2023*

The Court: Perused the report filed by the Director General (Building),  
Building Department, Kolkata Municipal Corporation dated 16<sup>th</sup> October, 2023.

The report mentions that the Director General was present at the time of inspection. It was found that there exists a two storied old building used for both residential and commercial purpose. After thorough spot inspection, it was found that few columns of steel joist are in existence at the roof. The steel joist columns appeared to be standing since long.

The Director General was of the opinion that the structure at the top cannot be treated as unauthorized. The demolition of the internal partition walls was also not considered to be unauthorized.

The Director General noticed that the old existing building was thoroughly renovated to secure the same on the basis of the notice served under Section 411(1) of the KMC Act, 1980 for safety and security of the inmates of the building and public in general.

The petitioner has filed an exception to the said report. It has been submitted that the person responsible ought to have obtained a specific permission from the Corporation for demolishing the internal partition wall. In view of the demolition of the partition wall, the area of the room in question has increased thereby changing the character of the room.

According to the petitioner, the building in question is an old one and the partition wall was a load bearing wall. On account of demolition of the same, the structural stability of the structure has been put to stake. The petitioner relies upon various provisions of the KMC Act and the Building Rules, 2009 in support of the submission that the construction has to be treated as unauthorized. It has been submitted that the report of the DG is in support of the report filed by the Executive Engineer.

Prayer has been made to appoint an independent structural engineer to assess the structural health of the premises in question.

Learned advocate representing the Corporation submits that no permission is required for the purpose of demolishing the partition wall in terms of Rule 3(2)(a)(i) of the Building Rules, 2009. It has been submitted that the renovation was done in response to the notice issued under Section 411(1) of the KMC Act. The Director General, the expert in the matter, personally inspected the property and has come to an opinion that the construction is not an unauthorized one.

Learned advocate representing the co-owner of the said property being the respondent no.6 submits that all repairing/renovation has been done in response to the notice under Section 411(1) of the Act under the supervision of the empanelled structural engineer. None of the repairing work is unauthorized. Prayer has been made for dismissal of the writ petition.

I have heard the submissions made on behalf of all the parties. It appears that the building in question was found to be in a ruinous state and as such, notice under Section 411(1) of the Act was issued to the owners/occupiers to demolish the dangerous portion of the building which is not repairable and to repair/secure the part/portion of the building which is repairable. In compliance of the direction passed for repairing/renovation, the renovation work has been done under the supervision of the empanelled structural engineer. The internal partition wall was demolished as the same was in ruinous condition beyond repair. By demolition of the internal partition wall, safety and security of the building has not been hampered in any manner. On the contrary, according to the report filed by the DG, the renovation has been made to secure the building for safety and security of the inmates of the building and public in general.

On a perusal of the provisions of law and the submissions made in Court, it does not appear that the repairing/renovation work is in any manner contrary to the provisions of law; neither the same is impermissible in law. The renovation/repairing work cannot be treated to be unauthorized.

In view of the above, no relief can be granted to the petitioner in the instant case.

The writ petition fails and is hereby dismissed.

The connected writ petition being WPA/5978 /2023 is also dismissed with the above observations.

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

(AMRITA SINHA, J.)