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ORDER SHEET
WPO No.1424 of 2023
IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
ORIGINAL SIDE

MANAK NAHATA & ORS.
VERSUS
THE KOLKATA MUNICIPAL CORPORATION & ORS.

BEFORE:
The Hon'ble JUSTICE AMRITA SINHA
Date:20th July, 2023.

Appearance:
Mr. Arif Ali, Adv.
Mr. Sarban Bhattacharjee, Adv.
....for the Petitioner.

Mr. Srijan Nayak, Adv.
Mr. Dwijasdas Chakraborty, Adv.
... for K.M.C.

Mr. Paritosh Sinha, Adv.
Ms. Noelle Banerjee, Adv.
...for Respondent No.6.

Mr. Anirban Saha Ray, Adv.
...Respondent No.7.

The Court:- The petitioners claim to be the occupiers/tenants of premises no.76, Bentinck Street, Ward-046, Borough-VI. They are aggrieved by the notice dated 08.07.2023 issued under Section 411[1] of the Kolkata Municipal Corporation Act, 1980.

By the said notice the owners and occupiers of the said structure have been directed to demolish the insecure portions of the building with immediate effect.

According to the petitioners, the portions that they are occupying are of a fairly healthy condition and do not require demolition.

It has been submitted that the impugned notice does not specify the portions which are required to be demolished, being dangerous. In the absence of proper identification of the dangerous portions, it will not be

possible either by the owners or occupiers to demolish or repair the said portions.

The respondent no.7 happens to be one of the co-owners of the subject premises. It has been submitted that without proper identification of the dangerous portions, repairing cannot be done.

None appears on behalf of respondent nos. 8 and 9, the co-owners of the subject property.

From the impugned notice it appears that the same is a cyclostyled copy of the notices issued under Section 411[1] of the Act. The dangerous portions are yet to be identified and notified to the owners and occupiers. The portions which are required to be demolished are not reflected in the impugned notice.

From the instruction forwarded by the engineers of the Kolkata Municipal Corporation, it appears that an earlier notice under section 411[1] was issued by the department on 15.07.2019. A notice board under section 411[2] of the Act describing the premises as “dangerous building” was affixed on the outer wall of the premises to alert the dwellers as well as the passerby and to avoid any untoward situation. There was information of collapse and the site was inspected by the department. Most of the building was vacant and the overall condition of the building is not good and it may cause untoward situation at any moment.

As per order of the Director General [Building] dated 08.08.2023, demolition programme was fixed on 11.07.2023 but on the request of the occupiers of the said premises, demolition programme has been deferred.

From the instruction forwarded by the engineers of the Corporation it appears that the next date of demolition is yet to be fixed.

The engineers of the Corporation are directed to cause a spot inspection upon prior notice to the owners and the tenants/occupiers to assess the structural health of the subject premises.

The engineers shall specifically identify the portions which are required to be demolished and the portions which are repairable. If it appears to the engineers of the Corporation that the building is beyond repair, the same shall also be intimated to the owners and occupiers.

Spot inspection shall be conducted at the earliest, but positively by 4th August, 2023. A formal communication shall be made to all the parties by 14th August, 2023. It will be open for the engineers of the Corporation to seek help of the local police station at the time of identification of the dangerous portions.

Till a final decision is taken by the engineers of the Corporation with regard to demolition of the portions which are in extremely dangerous condition, the demolition programme shall not be proceeded with.

Instruction forwarded by the engineers of the Corporation be retained with the records.

Writ petition stands disposed of.

Affidavit of service filed in Court today, be kept with the records.

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

(AMRITA SINHA, J.)