

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
ORIGINAL SIDE

APO/ 94 /2023
WITH
WPO 1306 OF 2023
IA NO:GA/1/2023

BHANU SONKAR AND ANR.
VS
KOLKATA MUNICIPAL CORPORATION AND ORS.

BEFORE:

The Hon'ble JUSTICE ARIJIT BANERJEE

AND

The Hon'ble JUSTICE APURBA SINHA RAY

Date : August 2, 2023.

Appearance:

Mr. Niloy Sengupta, Advocate

Mr. Sujit Banerjee, Advocate

....for Appellants

Mr. Srijib Chakraborty, Advocate (VC)

Mr. Sumitava Chakraborty, Advocate

..for Respondent nos. 5 & 6

Mr. Gurudas Mitra, Advocate

Mr. Jayanta Kumar Dhar, Advocate

....for KMC.

THE COURT: A judgment and order dated June 27, 2023, whereby the writ petition of the appellants being WPO 1306 of 2023 was dismissed by a Learned Single Judge, is under challenge in this appeal.

The appellants/writ petitioners claim to be tenants of one room on the ground floor and one room on the first floor of premises no.12, Goenka Lane, Kolkata – 700007. The private respondents herein are the owners and intending developers of the said premises.

It is the case of the owners and developers that the building is dilapidated and in a hazardous and dangerous state. A notice appears to have been issued by the Corporation under Section 412A of the Kolkata Municipal Corporation Act, 1980 (in short, "KMC Act"), which pertains to the power of the Corporation to declare any building or part thereof as condemned and also to order demolition of such building.

It further appears that the owners/developers obtained sanction of a building plan for re-constructing a new building at the aforesaid premises after demolition of the old one.

The present appellants, in an earlier round of litigation, approached the Learned Single Judge contending that such building plan ought not to have been sanctioned by the Corporation in favour of the owners/developers, since the plan was obtained by suppressing the presence of the appellants at the said premises as tenants. The Learned Single Judge disposed of that writ petition being WPO 24 of 2023 by a judgment and order dated February 8, 2023 noting that a civil suit filed by the writ petitioners for declaration of their tenancy right is pending before the competent civil court. The Learned Judge opined that the status of the writ petitioners as tenants is disputed. The writ court is not the appropriate forum to decide such a dispute. The Learned Judge disposed of the writ petition with a direction that in the event the writ petitioners are successful in getting their tenancy right declared before the civil court, then the private respondents (owners/developers) would be bound by the decree to be passed by the civil court and provide

accommodation to the writ petitioners in the reconstructed building, in accordance with law.

Being aggrieved, the writ petitioners carried such order of the Learned Single Judge in appeal by filing APOT 43 of 2023. This Bench, by a judgment and order dated February 17, 2023, noted that the prayer of the writ petitioners before the Learned Single Judge was for cancellation of the sanctioned plan. The appropriate authority to consider such prayer under Section 397 of the KMC Act, is the Municipal Commissioner. This Bench opined that the Learned Judge should not have entertained the writ petition at all and should have directed the writ petitioners to take recourse to the procedure provided in Section 397 of the KMC Act. The appeal was disposed of with the following observations:-

“Accordingly, we set aside the order under appeal. We grant liberty to the appellants/writ petitioners to make an appropriate application before the Municipal Commissioner by February 20, 2023. In the event, such application is made, the Municipal Commissioner or any competent officer authorised by him, shall decide such application in accordance with law by passing a reasoned order, within a period of three weeks from the date of receipt of the application, after giving an opportunity of hearing to the appellants and private respondents herein or their authorised representatives.

Till the decision is taken by the Municipal Commissioner or his delegate, which shall positively be done within three weeks from the date of receipt of the application, the private respondents shall not take steps for further demolition of the building in question.

We have been shown that the Corporation has issued notice under Section 412(A) of the Kolkata Municipal Corporation Act, 1980. This order will not, in any manner, stand in the way of the proceedings initiated by such notice, being carried to its logical conclusion or in passing such other order as may be necessary, in accordance with law.

Any observation in this order shall have no bearing on the civil suit pending before the learned XIIth Bench, City Civil Court, Kolkata.”

It appears that pursuant to the aforesaid order of this Bench, the Special Municipal Commissioner held a hearing wherein all the concerned parties participated. The Special Municipal Commissioner passed an order dated May 10, 2023, the material portion whereof reads as under:-

“That the sanction plan as granted vide B.P. No.2021040008 dated 29/06/2021 will be kept suspended and the suspension shall only be revoked or be duly revised, by inserting the names of the writ petitioners as occupiers/tenants, as the case may be, on the basis of the final out come of the said title suit. However, as the condition of the existing structure is very old and dilapidated, private respondents are allowed to demolish the said dangerous old and dilapidated structure.”

Being aggrieved with the aforesaid order, the present appellants approached the Learned Single Judge in the present round of litigation.

The Learned Judge took note of the order dated March 16, 2023, issued by the competent authority in KMC under Section 412A of the

KMC Act. The Learned Judge dismissed the writ petition with the following observations:-

“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.”

Being aggrieved, the writ petitioners have come up by way of this appeal.

Mr. Sengupta, learned advocate representing the appellants/writ petitioners vociferously argued that without first providing for space in the building plan sanctioned by the Corporation, wherein the appellants could be rehabilitated in the reconstructed building, the appellants cannot be required to vacate the premises in question nor whatever remains of the building can be demolished, as the appellants are still in occupation of the portion of the building which has always been under their tenancy. He says that as soon as the right of the appellants to be rehabilitated in the reconstructed building is reflected in the sanctioned building plan, the appellants will vacate the premises.

We have also heard learned advocate for the owners/developers. He says that the Court has protected the interest of the appellants sufficiently. The appellants have approached a competent civil court for declaration of their tenancy in respect of the concerned premises. That itself shows that there is a dispute as regards their tenancy right. If they succeed in the civil suit that they have instituted, their names will be incorporated in the sanctioned building plan and they will be duly rehabilitated in the reconstructed building. However, as of now, the appellants cannot insist on incorporation of their names in the sanctioned building plan qua tenants as pre-condition for vacating the premises to enable the authorities and other parties concerned, to give effect to the order under Section 412A of the KMC Act, dated March 16, 2023.

Having heard learned counsel for the parties as also learned counsel for the Corporation, we are of the view that the appellants cannot be heard to say that only after their names are reflected in the sanctioned building plan, they will vacate the premises in question. From the papers on record as also from submissions of the parties, it appears that the building is in a dangerous state posing real threat to life and limbs of people in the vicinity thereof. A substantial portion of the building appears to have been demolished already. It is imperative that the appellants do vacate the premises at the earliest to enable demolition thereof. We reiterate that in the event the appellants succeed in the civil suit pending before the learned City Civil Court, the names of the appellants will be incorporated in the sanctioned building plan and they will be rehabilitated in the reconstructed building, in accordance with law.

We also note that the order under Section 412A of the KMC Act, dated March 16, 2023, has not been challenged by the appellants as yet. Mr. Sengupta, learned advocate representing the appellants, says that only a few days ago the appellants came to know of such order. Such order was never served on the appellants but was pasted on the wall of the building in question. Immediately upon coming to know of the order, the same has been brought on record by way of filing a supplementary affidavit. He says that liberty should be granted to the appellants to challenge the said order.

No such liberty is required. If the appellants are aggrieved by the said order and if they are entitled to challenge the same in accordance with law, they can always do so.

In view of the aforesaid discussion, we find no infirmity in the order under appeal or in the order of the Special Municipal Commissioner that was assailed before the learned Single Judge.

In the event the present appellants challenge the order under Section 412A of the KMC Act dated March 16, 2023, before the appropriate forum, in accordance with law, such proceedings shall be decided without being influenced by any observation in this order.

The appeal and the connected application are, accordingly, dismissed.

There will be no order as to costs.

Since we have not called for affidavits, the allegations in the application before us are deemed not to be admitted by the respondents.

(ARIJIT BANERJEE, J.)

(APURBA SINHA RAY, J.)