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ORDER SHEET
WPO No.1486 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:9th August, 2023.

Appearance:

Mr. Nilay Sengupta, Adv.
Mr. Sujit Banerjee, Adv.
...for Petitioners.

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

Mr. Srijib Chakraborty, Adv.
Mr. Sumitava Chakraborty, Adv.
...for Respondent Nos.6 & 7.

The Court:-The instant writ petition is in respect of premises no.12, Goenka Lane, Ward No.23, Borough-IV under jurisdiction of the Kolkata Municipal Corporation.

The petitioners claim to be tenants of the subject premises. A suit is pending consideration between the landlords and the tenants being Title Suit No. 56 of 2023 wherein a written objection has been filed on behalf of the landlords mentioning that the plaintiffs, i.e. the petitioners herein are the tenants in respect of two rooms, one is in the ground floor and another is on the first floor. The defendants decided to demolish the existing structure in order to raise a multi storied building over there. The defendants are ready and willing to restore the possession of the plaintiffs after construction of the said premises.

A building plan has been sanctioned for raising construction but in view of the objection raised by the petitioners, the Special Municipal Commissioner of the Kolkata Municipal Corporation by an order dated 4th May, 2023 signed on 10th May, 2023 directed the sanctioned plan to be

kept suspended and to be revoked or revised by inserting the names of the writ petitioners as occupiers/ tenants, as the case may be, on the basis of final outcome of the title suit. The condition of the existing building being old and dilapidated, the private respondents, i.e., the landlords herein were allowed to demolish the said dangerous, old and dilapidated structure.

The petitioners being aggrieved by the said order filed a writ petition before this Court being WPO No.1306 of 2023 which stood dismissed on 27th June, 2023. The order of dismissal was carrying in appeal by the petitioners herein in APO No.94 of 2023 with WPO 1306 of 2023 and IA NO:GA/1/2023 and by order dated 2nd August, 2023 the Hon'ble Division Bench was pleased to dismiss the appeal and the connected application.

The Appeal Court was, however, of the opinion that a substantial portion of the building has already been demolished and it is imperative that the appellants do vacate the premises at the earliest to enable demolition thereof.

The Hon'ble Division Bench reiterated 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.

The Hon'ble Division Bench was pleased to record that if the appellants are aggrieved by the order passed under Section 412A of the KMC Act, 1980 and if they are entitled to challenge the same in accordance with law, they can always do so.

Relying on the aforesaid observation of the Hon'ble Division Bench, the instant writ petition has been filed.

The petitioners pray for a direction upon the respondents, *inter alia*, to set aside and quash the order passed by the Deputy Chief Engineer (Civil)/Building/North of the Kolkata Municipal Corporation dated 16.03.2023 and to comply with the guidelines as laid down in the office Circular No.7 of 2021-22 dated 22.11.2021.

Though the petitioners have challenged the order dated 16.03.2023 but it appears that thereafter the Special Municipal Commissioner of the Kolkata Municipal Corporation passed an order on 04.05.2023 signed on 10.05.2023 and the said order has been upheld by the Hon'ble Division Bench.

The Special Municipal Commissioner of the Kolkata Municipal Corporation as well as the Hon'ble Division Bench was pleased to protect the interest of the petitioners by recording that in the event the appellants succeed in the civil suit, their names will be incorporated in the sanctioned building plan and they will be rehabilitated in the reconstructed building.

The landlords have themselves admitted that the petitioners are the tenants and the landlords are agreeable to restore the possession of the petitioners after construction is made.

Accordingly, at this stage the Court is of the opinion that there is no requirement of entertaining the present writ petition.

Right of the petitioners is very much protected by the order passed in the proceedings before this Court and also before the Special Municipal Commissioner.

In view of the above, there is no requirement of interfering in the instant writ petition. 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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