

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
ORIGINAL SIDE

APO/172/2023
WITH WPO/1379/2023
IA No: GA/1/2023

M/S. RUBBER EQUIPMENT AND ENGINEERING
COMPANY PVT. LTD. & ORS.
VS
KOLKATA MUNICIPAL CORPORATION, BUILDING
DEPARTMENT AND ORS.

BEFORE:

The Hon'ble JUSTICE ARIJIT BANERJEE
The Hon'ble JUSTICE M.V. MURALIDARAN
Date : 14TH December, 2023.

Appearance:
Mr. Bhaskar Nandi, Adv.
For the appellants
Mr. Alak Kumar Ghosh, Adv.
Mr. Gopal Chandra Das, Adv.
For KMC.
Mr. Ranjan Kr. Roy, Adv.
Mr. Subhadip Biswas, Adv.
Mr. Ranajit Ray, Adv.
For respondent nos. 6 and 7.

The Court:- An order dated August 28, 2023, passed by a learned Judge of this Court in the writ petition of the appellants herein being WPO/1397/2023, is under challenge in this appeal at the instance of the writ petitioners.

The appellants say that they are tenants in various portions of the premises no. 4, Garstin Place, Kolkata-700 001. The private respondents are the owners of the said building.

It appears that the Deputy Chief Engineer (Civil)/Building/North, Kolkata Municipal Corporation (in short 'KMC') passed an order dated September 12, 2022, after granting opportunity of hearing to all concerned parties declaring the aforesaid building as a "condemned building", as per report of the Building Department, taking into account the safety of the inmates and public in general. After declaring the building as condemned, since the same was found to be in a dangerous state, the aforesaid officer of KMC passed the following directions:

"AND WHEREAS the owners and tenants/occupiers of the building are to vacate the building within 30(thirty) days from the date of serving of the notice for the safety and security of the inmates and public in general.

The existing building is to be demolished by the owner of the Premises No. 4, Garstin Place, Ward 045 at his own cost and risk under the supervision of an Empanelled Structural Engineer of KMC to avoid any accidental hazards. During demolition, all precautionary measures are to be taken by the owner of the said premises to avoid any accidental hazards to the neighbouring premises and public in general.

The owner of the captioned premises is directed to give proper rehabilitation to the tenants/occupiers of the Premises No. 4, Garstin Place, Ward 045; Borough -V and to provide equivalent spaces to all the tenants/occupiers after construction of new building at Premises No. 4, Garstin Place, Ward 045.

AND WHEREAS the owners are hereby offered an option for reconstruction of the building in accordance with the plan to be sanctioned by the

Kolkata Municipal Corporation as expeditiously as possible by providing floor area to accommodate to erstwhile tenants/occupiers and additional floor required for recovery of expenses for construction;

NOW the owners are, THEREFORE, requested to submit a proposed plan for reconstruction within 60 (sixty) days under Section 412A of the Kolkata Municipal Corporation Act, 1980 failing which an option shall be given to the others including the tenants/occupiers of the said building to undertake construction thereat with the direction to provide the correspondence portion of land occupied in the same portion by the land owners or failing which the Kolkata Municipal Corporation shall proceed in terms of law.

The construction work is to be completed within the stipulated period as per plan, to be sanctioned by the Kolkata Municipal Corporation.

In the event of disagreement or disinclination on part of owner or owners, as the case may be to avail of the opportunity contemplated under clause (iii) of Section 412A of the KMC Act, 1980, the owner or owners, as the case may be, keeping the building in dilapidated condition which may likely cause the environment pollution, fire hazards, unsafe to public safety, health hazards, nuisance etc. shall be subject to such action as provided in the law for the time being in force.

Subject to the provisions of Section 412A of the KMC Act, 1980, the Kolkata Municipal Corporation may cause development work in respect of the dilapidated buildings in such transparent manner and on such conditions, as may be prescribed by Scheme, by the Kolkata Municipal Corporation.”

The appellants approached the learned single Judge essentially for implementation of the aforesaid order dated September 12, 2022 passed by the officer of KMC and for some other reliefs: Prayers (a) to (d) of the writ petition read as follows:

- a) A Writ of and/or Writs in the nature of Mandamus do issue directing the respondent nos. 1 to 5 and each of their men, agents, servants and subordinates to take necessary steps to implement the order passed by the respondent no. 3 dated 12th September, 2022 forthwith;
- b) A Writ of and/or Writs in the nature of Mandamus do issue directing the respondent nos. 1 to 5 and each of their men, agents, servants and subordinates to demolish the said premises which has been declared Condemned and/or dilapidated in terms of Section 411 and 412A of the Kolkata Municipal Corporation Act, 1980 forthwith;
- c) A Writ of and/or Writs in the nature of Mandamus do issue directing the respondent nos. 1 to 5 and each of their men, agents, servants and subordinates to give necessary permission and/or sanction to the petitioners to construct a new building in the said premises after

demolition of the condemned building at the petitioners' own cost forthwith.

- d) A Writ of and/or Writs in the nature of Mandamus do issue directing the respondent nos.1 to 3 and each of their men, agents, servants and subordinates to act in terms of the demand of justice letter dated 19th January, 2023 sent by the petitioners forthwith.”

Before the learned Judge it was submitted on behalf of the private respondents that they have entered into talks with the developers for demolition and reconstruction of the condemned building. It was submitted that steps will be taken in the matter in accordance with law and in terms of the direction passed by the Deputy Chief Engineer on September 12, 2022. Recording the same, the learned Judge opined that there is no requirement of passing any further order. The writ petition was accordingly disposed of.

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

Learned Advocate for the appellants says that more than one year and three months have passed since the order dated September 12, 2022 was passed by KMC. The owners of the

building being the private respondents herein, have still not taken any steps in terms of the said order. It is in public interest that the said order is implemented at the earliest. Otherwise, if the building collapses, it may cause loss of lives or injury or damage to neighbouring properties.

We find substance in the submission made on behalf of the appellants. However, it is submitted on behalf of the private respondents that the talks with the developers are at an advanced stage and necessary agreement will be finalised within four weeks from date.

We are not at all happy with the conduct of the private respondents. 15 months have elapsed since KMC passed the order dated September 12, 2022 declaring the aforesaid building as condemned building and issuing necessary consequential directions on the owners who are the private respondents herein.

However, as a last opportunity, a month's time is granted to the private respondents to act in terms of KMC's order dated September 12, 2022. If the building in question is not demolished by the private respondents within a month from date, KMC shall take necessary steps in the matter including demolishing the said building at the cost of the private respondents to avoid any untoward incident. In case KMC is required to demolish the

condemned building by reason of failure on the part of the owners thereof to do so, KMC will be entitled to raise necessary demand for cost of demolition on the owners and the owners shall immediately deposit such money with the KMC. Once the building is demolished, the matter of reconstruction of a new building, if any, may be taken forward, in accordance with law.

The order dated September 12, 2023, passed by KMC, has not been challenged by anybody before any forum. It has attained finality and must be implemented.

By consent of the parties the appeal and the application are thus disposed of.

Since we have not called for affidavits, the allegations made in the stay application are deemed not to have been admitted by the respondents.

(ARIJIT BANERJEE, J)

(M.V. MURALIDARAN, J.)

dg/