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IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
ORIGINAL SIDE

APO/190/2023
WPO/1443/2023
IA No.GA/1/2023

AMAR CHAND JAIN AND ORS
VS
SUHASINI LIHIA AND ORS.

BEFORE:

The Hon'ble JUSTICE ARIJIT BANERJEE
The Hon'ble JUSTICE SUPRATIM BHATTACHARYA
Date : 18TH December, 2023.

Appearance:
Ms. Arpita Saha, Adv.
Ms. Kumkum Mukherjee, Adv.
For the appellant
Mr. Gopal Chandra Das, Adv.
Ms. Manisha Nath, Adv.
.....for KMC.
Mr. Sukrit Mukherjee, Adv.
Mr. S. R. Kakrania, Adv.
Mr. Karanjeet Sharma, Adv.
For private respondent no.1.

The Court:- Supplementary affidavit and affidavit of service filed by the appellants in Court today be kept with the records.

A judgment and order dated September 13, 2023, whereby the writ petition of the respondent no.1 herein being

WPO/1443/2023 was disposed of by a learned Judge of this Court, is the subject matter of challenge in this appeal at the instance of respondent nos. 5 to 28 in the writ petition.

The matter pertains to premises no. 114B, Chittaranjan Avenue, Kolkata, within the territorial jurisdiction of Kolkata Municipal Corporation (in short KMC). It appears that the structure standing at the said premises is very old and is in a dilapidated condition. There was an earlier round of litigation concerning the said building. A writ petition being WPO/470/2019 had been filed by the respondent no. 1 in this appeal praying for conclusion of the proceeding initiated by KMC under Section 412(A) of the KMC Act. The writ petitioner wanted demolition of the building in question so that a new building could be constructed. On that writ application, a learned Judge passed an order dated February 22, 2021, directing the KMC officials to inspect the premises in question and submit a report before the Court. Such direction was issued specifically to the Executive Engineer, Borough - IV & V. The report that was filed is, inter-alia, to the following effect:

“Upon inspection, it was revealed that the entire building is occupied. In some portions, cement plastering, and patch renovation works have commenced. In some other portions, a few vertical cracks were visible on the walls and cantilever beams while some horizontal physical cracks have appeared on the masonry walls. The kari-barga ceilings, particularly at the corridors, are also badly damaged, and iron rods/bars, which have rusted/corroded with age, and are separated from the floor slabs, were visible in the corridors of the building. Few photos showing such cracks and damages have been captured in mobile camera and are annexed herewith (Flagged-B).

During inspection, the height of the existing building was measured at three points shown in the attached sketch plan (Flagged-C). At point AA, it is about 60 feet 07 inches, at point BB, about 60 feet and at point CC, about 59 feet 10 inches. Therefore, on basis of such measurement, it can be asserted that there is a vertical tilt of the building, measuring approximately 09 inches.

Overall, it is extremely doubtful that the repair works that are in progress will be enough to render the building safe for habitation.”

The matter finally appeared before another learned Judge on January 27, 2022. The learned Judge disposed of the writ petition with the following directions:

- “a) the tenants and occupiers shall be allowed to complete the repair under the supervision and guidance of an empanelled structural engineer of the Corporation at their own risk and cost, with precautionary measures and without disturbing the neighbours and public in general.*
- b) The Corporation authorities may enter into the premises and cause inspection of the same, to ensure that the repair is being done as per law.*
- c) The Head of the Department of Construction Engineering Jadavpur University, shall form a panel of experts, who shall make an inspection of the premises in question in presence of the parties and furnish their report on the condition of the building to the parties as also file the same before the Commissioner, Kolkata*

Municipal Corporation. Let such inspection be made and report be furnished within a period of three months from date of receipt of the fees, payable by the occupiers.

- d) *All parties shall be entitled to respond to the said report prepared by the expert team and file their exception/objection/written version to the same before the Commissioner, Kolkata Municipal Corporation. Thereafter, the Commissioner, Kolkata Municipal Corporation shall act and proceed in accordance with law on the basis of the report to be furnished as directed hereinabove.*
- e) *While deciding the issue, the Commissioner, Kolkata Municipal Corporation shall follow the procedure laid down by the statute and pass an order upon giving an opportunity of hearing to all the parties including the representative of the team of experts. Such order shall be passed and communicated within three months from receipt of the report of inspection.*

This order is being passed on the basis of the report filed before this court.

The fees payable to the said team for the inspection to be undertaken shall be decided by the Head of the Department and communicated to the learned Advocate-on-Record for the tenants/occupiers. The fees shall be borne by the occupiers and deposited with the Head of the Department prior to the inspection. Any party who does not co-operate, shall be held responsible in case of any accident.”

It appears that pursuant to the said order a letter dated April 13, 2022, was addressed by the learned lawyer of the respondent no. 1 herein to the Head of the Department, Department of Construction Engineering, Jadavpur University referring to an earlier letter dated February 9, 2022, calling upon the addressee to form a Committee in terms of the order dated January 27, 2022.

A two person Committee was formed which submitted a report. The operative portion of the said report reads as follows:

“3.0. DISCUSSION AND CONCLUSION:-

3.1. *Based on the investigations carried out at this structure, the following can be concluded.*

- *This building is old and in distressed condition. Corrosion related distress and permanent geometric deformations are also noticed in various parts of this structure.*
- *This five-storied load bearing structure is very old. Due to its long service life, some portions of this structure is in distressed condition. Due to tilting of front portion of this building, clear and prominent cracks are noticed along the line to open to sky area. Nature of crack pattern of the building is marked on the below plan drawing for better understanding of nature of the distress pattern of the building. Front portion of the building has shown more tilt at southern and south-western corner whereas other parts of the building has not shown this much quantity of tilting. This phenomenon clearly signifies that front portion settled/tilted more with respect to rest of the building and which resulted clear prominent cracks on the line along the open to sky area shown on below plan drawing.*

[Plan drawing]

- *As front portion of the building has shown a very high tilt with respect to vertical line and values are in the range of 1/60 to 1/75, which is a considerably high for old brick masonry structure. Moreover, this differential tilting of front portion with respect to other portion the building resulted cracks/disintegration in this old structure, in our opinion this structure is vulnerable from safety point of view.*
- *Further occurrence of significant seismic force in future may deteriorate the situation from safety point view.*
- *Detailed photographs, depicting the present condition of the structure, is documented for future references.”*

In the present round of litigation, the respondent no.1 herein approached the writ court praying for implementation of the notice dated June 1, 2016 issued by KMC under Section 411(1) of the KMC Act, 1980. The present appellants contended before the learned Judge that the structure is in a repairable condition and is not required to be demolished. The

learned Judge disposed of the writ petition with the following observations and directions:

“As the report filed by the engineers of the Jadavpur University, engaged pursuant to the order passed by this Court, has opined that the structure in question is in a distressed condition and vulnerable from safety point of view, accordingly, safety of the inmates of the said structure ought not to be compromised in any manner.

The Commissioner of the Kolkata Municipal Corporation or his delegate is directed to take immediate steps in accordance with the provisions of Section 412A and its various sub-clauses so that the occupants of the said structure may not suffer in any event any untoward accident takes place.

Steps shall be taken in the matter after giving a reasonable opportunity of hearing to all the necessary parties.

A decision shall be arrived at the earliest but positively within a period of four months from the date of communication of this order.

As the tenants are continuously opposing the steps taken by the landlord to demolish the structure thereat, and

the structural engineers of the Corporation as well as Jadavpur University have opined that the structure is not in a very stable condition, then in that event, if any accident occurs, the landlord/owner ought not be to held solely responsible for the same."

Being aggrieved, the private respondents in the writ petition have come up by way of this appeal.

We have heard learned Advocates for the appellants and the respondent/writ petitioner at length.

The appellants say that the building in question is in moderately good condition. Necessary repairs have been effected to the building by the appellants, who occupy various portions of the building as tenants. The respondent/writ petitioner is in cahoots with the KMC officials. The respondent/writ petitioner has induced KMC to initiate proceedings under sections 411/412(A) of the KMC Act to achieve indirect eviction of the tenants from the building in question. These submissions are of course strongly denied and disputed by learned Advocate for the respondent/writ petitioner.

We have considered the report of the Committee formed by the Head of the Department, Department of Construction Engineering, Jadavpur University. It is an expert report which definitely carries a lot of weight. The report is to the effect, firstly, that the building is in a distressed condition; secondly, no amount of repair work may make the building safe.

In view of the aforesaid, we see no infirmity in the order of the learned single Judge. Interest of the public in general must prevail over the private interest of the appellants. If any untoward incident happens by reasons of collapse of the building in questions or any portion thereof, who will take the responsibility for the same?

Accordingly, we do not interfere with the order under appeal. We, however, clarify that in the event the building is demolished and reconstructed, the appellants will be rehabilitated therein in accordance with law.

The time for KMC to carry out the order of the learned single Judge is extended by four months from date.

At the hearing, which the learned single Judge had directed, the parties will be entitled to rely on all such documents as they may be advised. The appellants may also file their objection to the reports filed in Court including the report of the Expert Committee formed by the Head of Department, Department of Construction Engineering, Jadavpur University.

The appeal and the application are disposed of accordingly.

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)

(SUPRATIM BHATTACHARYA, J.)

dg.