

**14.06.2024**  
**ADSL.01**  
**Suman**  
**Ct.No.15**

**WPA 15725 of 2024**

**Sadaf Iran & Ors.**

**Vs.**

**The Kolkata Municipal Corporation and Ors.**

Mr. Arindam Banerjee  
Mr. Sumitava Chakraborty  
Ms. Ananya Das  
..for the petitioners

Mr. Sandipan Banerjee  
Ms. Manisha Nath  
..for KMC

The parties do not dispute that a plan was sanctioned by Kolkata Municipal Corporation for constructing a G+3 storeyed structure. It is also not in dispute that on the land in question a G+5 building has been raised and the petitioners are in occupation of the 4<sup>th</sup> and 5<sup>th</sup> floor of the building.

On the earlier round of writ petition (WPO No.208 of 2024) (*Falahuddin Haider vs. Kolkata Municipal Corporation*) concerning the said premises, a Co-ordinate Bench of this Court by an order dated May 21, 2024, directed, inter alia, as follows:-

*“As regards the construction made on the basis of the plan obtained on furnishing fraudulent documents, the Commissioner of the Corporation is directed to initiate appropriate proceeding under Section 397 of the Kolkata Municipal Corporation Act, 1980 for cancelling the subject plan.*

*Be it recorded that the plan in question was sanctioned in the name of the erstwhile mutuwali who is no longer alive. The Corporation shall, accordingly, serve notice of hearing under Section 397 of the Kolkata Municipal Corporation Act, 1980 to the present mutuwalies, upon the persons responsible for making construction and upon the occupants of the top two floors constructed unauthorizedly.*

*Steps shall be taken under Section 397 at the earliest but positively within a period of twelve weeks from the date of communication of this order. All consequential steps shall be taken by the Corporation pursuant to the order passed immediately thereafter.”*

It is the grievance of the petitioners that without serving a notice under Section 397 of the Kolkata Municipal Corporation Act, 1980 upon them, the Corporation, by an order dated June 9, 2024, issued a direction to vacate the premises.

Learned advocate appearing for the Kolkata Municipal Corporation submits that the order dated May 21, 2024, directed for giving an opportunity of hearing to the petitioners a proceeding under Section 397 of the Kolkata Municipal Corporation Act, 1980. No sanctioned plan subsists for the 4<sup>th</sup> floor and 5<sup>th</sup> floor. It cannot be said that the petitioners are entitled to any notice since they are in occupation of a construction beyond the sanctioned plan. He further submits in a demolition proceeding under Section 400(8) of the Kolkata Municipal Corporation Act, 1980, only the owner of the

building is required to be notified. The petitioners, admittedly, being the occupants of the premises do not have a right to hearing.

Mr. Banerjee, learned advocate appearing for the petitioner, on the other hand, submits that the order dated May 21, 2024, clearly mandated that the petitioners should be heard in a proceeding under Section 397 of the Kolkata Municipal Corporation Act, 1980. If without any opportunity of hearing to the petitioners, the demolition takes place, it would render the order dated May 21, 2024, nugatory.

I am of the view that since a Co-ordinate Bench of this Court directed the occupants in respect of the 4<sup>th</sup> and 5<sup>th</sup> floor premises to be heard in a proceeding under Section 397 of the Kolkata Municipal Corporation Act, 1980, it will be a proper compliance of the said order if the petitioners are heard before any demolition proceeding is initiated in respect of the aforesaid two floors.

Accordingly, this Court directs respondent no.3 to give an opportunity of hearing to the petitioners on June 20, 2024, at 12 p.m. No separate notice of hearing is required to be given to the petitioners.

The petitioners, through their advocate, give an undertaking before this Court that they will

participate in the hearing without seeking any adjournment.

The order should be communicated to the petitioners immediately.

If the petitioners do not receive the order, the order will be affixed to the relevant premises.

It is made clear that if the petitioners do not participate in the hearing, the Corporation will be entitled to proceed ex parte against them and pass necessary orders to proceed with the demolition proceeding.

Accordingly, **WPA 15725 of 2024** is disposed of.

Urgent photostat certified copy of this order, if applied for, be supplied to the learned advocates for the parties on usual undertakings.

**(Kausik Chanda, J.)**