

21.08.2024

Item Nos.03 and 4.
Crt.No.02
b.r. & sukhosree

WPA 18716 of 2024

Bhudeb Mal

-vs-

The Kolkata Municipal Corporation & Ors.

With

WPA 18301 of 2024

Arun Kumar Dutta

-vs-

The Kolkata Municipal Corporation & Ors.

Mr. Bidyut Kumar Halder
Mr. Indranil Halder.

..... For the petitioner in
WPA 18716 of 2024

Ms. Jayeeta Sinha
Mr. Ranjit Rajak.

.... For the State in
WPA 18716 of 2024

Mr. Debayan Bera
Ms. Sumitra Das.

.... For the petitioner in
WPA 18301 of 2024 and
respondent no.5 in
WPA 18716 of 2024

Mr. Joydeep Banerjee
Ms. Rupsha Chakraborty.

.... For the State in
WPA 18301 of 2024

Mr. Achintya Kumar Banerjee
Mr. Sourav Chowdhuri.

.... For the Kolkata
Municipal Corporation
in both the writ petitions.

Mr. Arindam Mitra
Ms. Sanjukta Samanta (Mitra).

...For the added resp. no.5L
in WPA 18301 of 2024.

Mr. Anjan Bhattacharyya
 Mr. Subrata Guha Biswas
 Mr. Sandipan Maity.

...For the resp. nos. 5A,5C,5G
 and 5P in WPA 18301 of 2024.

Mr. Kishore Mukherjee

...For the resp. nos., 5H to 5J
 and 5R in WPA 18301 of 2024.

Mr. Balaji Chakraborty

...For the Resp. nos. 5D and 5K.

Mr. Sobhan Majumder

...For the Resp. nos. in 5F,5N,5S
 and 5U in WPA 18301 of 2024

Mr. Bitan Das

.... For the Resp. no. 5O in
 WPA 18301 of 2024.

On the urgency pleaded on behalf of the petitioners in both the writ petitions and in view of the determination being assigned before this Court, these two writ petitions have been taken up for consideration by publishing the same in the daily cause list.

Out of these two writ petitions, **WPA 18301 of 2024** has been specially assigned before this Court, as it appears from record.

On the prayer of Mr. Debayan Bera, learned counsel appearing for the petitioner in WPA 18301 of 2024, leave is granted to file supplementary affidavit to the petitioner. Supplementary affidavit, filed in Court today, is taken on record.

The premises is one being premises **no.2, Rash Behari Avenue, Kolkata-700026, P.S. Tollygunge (for short, the said premises).**

WPA 18716 of 2024 (hereinafter referred to as the **first writ petition**) has been filed by one of the tenants **Shri Bhudeb Mal**, who has a **Sweetmeat shop** under the name and style **Annapurna Sweet Home** at a portion of the ground floor of the said premises.

The relevant averments from the first writ petition which led the petitioner to file the writ petition is quoted below:-

“6. Your petitioner states that your petitioner is running the said sweet shop for more than 50 years but all on a sudden on 12.7.2024 the respondent authorities stopped the said sweet business without any notice and your petitioner could not run the said sweet business having all the required licenses for the said shop.”

Inter alia, in the light of the said averment, the petitioner claims the following reliefs:-

“a) Writ in the nature of Mandamus commanding the respondents authorities to allow your petitioner to run the said sweet shop, immediately;

b) Writ in the nature of Certiorari directing the respondents to produce the records of the case so that on perusal of such

records conscionable justices may be done between the parties.

C) Rule Nisi in terms of prayer

(a) and (b) hereof;

d) After hearing the cause shown if any, to make the Rule absolute

e) To pass such order or further order or orders as your Lordships may deem fit and proper and to issue any other appropriate writ, order and/or direction;

f) Interim order directing the respondents to allow your petitioner to run the said sweet shop of your petitioner, forthwith.”

The disputes *inter se* parties in these two writ petitions are that the **Kolkata Municipal Corporation (for short, KMC)** has declared the said premises to be a dangerous and ruinous building.

Mr. Achintya Banerjee, learned counsel appearing for the KMC in both these writ petitions, submits on instruction that, the relevant notices under **Section 411(1) of the Kolkata Municipal Corporation Act, 1980 dated July 21, 2007 and May 11, 2011** were issued by the KMC. Challenging the said notices, a writ petition was filed by one Bholanath Dutta and others, the then owners of the premises. A co-ordinate Bench by its order dated **January 11, 2018** disposed of the said writ petition directing the **Special Municipal**

Commissioner (G & D), K.M.C. to hear the issue after giving opportunity of hearing to all the interested parties to the said premises including the occupiers therein. The parties to both these writ petitions appearing today before this Court have submitted and confirmed that all the interested parties were granted opportunity of hearing by the said Special Municipal Commissioner. The Special Municipal Commissioner then passed a reasoned order which was communicated to the petitioner in the first writ petition and all other interested parties on **August 2, 2018 at pages 25 to 28** to the said first writ petition. The said reasoned order speaks for itself and has specified modes and modalities as to how the KMC shall take further steps in accordance with law. All those who are interested in the said premises, occupiers being the tenants and the landlords of the premises have also agreed to the modes and modalities which are to be performed by them mentioned in the said order of the Special Municipal Commissioner. The parties represented today before this Court in both these writ petitions have also agreed and confirmed that they would perform their respective obligations to give an immediate effect to the said order passed by the Special Municipal Commissioner, **annexure p-5 at pages 25-28** to the first writ petition.

From the reliefs claimed in the first writ petition, it appears to this Court that, the said order passed by the Special Municipal Commissioner has not been challenged. Thus, the writ petitioner in the first writ petition has accepted the said order and has now agreed to abide by the same.

WPA 18301 of 2024 (hereinafter as the **second writ petition**) filed by the present landlords who are the successors-in-interest of the erstwhile landlords at whose instance ultimately the said order was passed by the Special Municipal Commissioner, as referred to above.

The reliefs claimed in the second writ petition are quoted below:-

“ a) Rule 27 may be dispensed with;

b) A Writ of or in the nature of Mandamus and/or orders and/or directions of like nature commanding the respondents and each one of them, including their officers, employees, men and agents, to forthwith take immediate action to demolish the existing dilapidated building, being premises no.2 Rash Behari Avenue, Kolkata-700026;

c) A Writ in the nature of Mandamus and/or orders and/or directions of like nature commanding the respondents to sanction the proposed

building plan submitted with letter dated December 01, 2022;

d) Issue a writ of or in the nature of certiorari calling for the records relating to premises no.2, Rash Behari Avenue, Kolkata-700026, as maintained by the respondent nos. 1 to 6, to this Hon'ble Court so that conscionable justice may be administered;

e) Such writ/writs and/or order or orders and/or direction or directions as Your Lordships may be deemed fit and proper;

f) Rule NISI in terms of prayers (a), (b) and (c) above;

g) An order directing the respondent authorities to take immediate steps to take action in respect of premises no.2, Rash Behari Avenue, Kolkata-700026 by demolishing the entire structures/building lying thereon and to submit a report with regard thereto.

h) Ad-interim order in terms of prayer (e) above;

i) Costs of and/or incidental to this application be paid by the respondents;

j) Any other further order or orders and/or directions or directions as Your Lordship may deem fit and proper for the ends of justice."

From the reliefs claimed in the said second writ petition it appears that, the present landlords of the

premises are also not aggrieved with and have not challenged the said order passed by the Special Municipal Commissioner, **Annexure-P5 at pages 25 to 28** to the first writ petition.

The contention of the present landlords in the second writ petition is that, the said premises should immediately be demolished by the KMC authority and the proposed new building plan should be sanctioned by the KMC authority for a new construction on the selfsame premises.

The respondents in the second writ petition who are the other co-sharers of the premises and some of the existing tenants and occupiers of the said premises have also accepted the said order of the Special Municipal Commissioner, as referred to above. All these respondents in the second writ petition have confirmed before this Court today that, they have **no objection** if the said order of the Special Municipal Commissioner is carried out in its true spirit and effect in accordance with law.

The parties to this second writ petition have agreed before and confirmed this Court that, they would render all necessary cooperation for giving effect to the said order of the Special Municipal Commissioner.

Similarly, all the parties to the said first writ petition have also agreed before and confirmed this

Court that, they would render all their assistance and cooperation to carry out the said order of the Special Municipal Commissioner.

Ms. Jayeeta Sinha, learned State counsel along with Mr. Ranjit Rajak, learned State advocate appearing for the State respondents in the first writ petition submits a police report dated **July 18, 2024**, issued under the seal and signature of the **Officer-in-Charge, Tollygunge Police Station**, the same is taken on record.

Mr. Joydeep Banerjee, learned State counsel along with Ms. Rupsha Chakraborty, learned State counsel appearing for the State respondents in the second writ petition submits a police report dated **July 28, 2024**, issued under the seal and signature of the **Officer-in-Charge, Tollygunge Police Station**, the same is taken on record.

Mr. Achintya Banerjee, learned counsel appearing for the KMC in both these writ petitions submits a report dated **August 17, 2024** issued under the seals and signatures of the **Executive Engineer, Borough – VIII (Building Department), KMC and the jurisdictional Assistant Engineer**, is taken on record.

On a overall view of the matter, it appears to this Court that, since the said order of the Special Municipal Commissioner, **Annexure-P5** to the first writ petition

has been crystalised and attained its finality and since the parties to both these writ petitions have accepted the same and further are agreeable to render all their cooperation to give an immediate effect thereto. All the subsequent steps taken by the KMC in the light of the said reasoned order passed by the Special Municipal Commissioner, are also accepted by the parties to both the writ petitions and they are agreed to give an immediate effect thereto.

In view of the above, on the mutual agreement and consent of the parties to both the writ petitions, the following directions are made :

- i) The landlords as agreed by them, shall provide temporary alternative accommodation to the tenants and occupiers of the premises positively within a period of **two months** from today;
- ii) The tenants and occupiers, as agreed by them, shall address their respective declaration containing **no objection** to all the landlords but submit the same to Sri Arun Kumar Dutta, the writ petitioner in the second writ petition. Copy of each of such declaration containing **no objection** shall also be served by the respective tenants and occupiers upon the **Executive**

Engineer, Borough – VIII, KMC positively within a period of **two weeks** from the date of their respective temporary re-allocation of space;

- iii) After receiving all these declarations containing **no objection** from the tenants and occupiers, the landlords shall apply for **sanction of building** plan in accordance with law upon compliance of all the statutory formalities positively within a period of **four weeks** from the date of receiving such declarations from the tenants and occupiers;
- iv) Upon receiving the said application for sanction of building plan from the landlords, the appropriate authority of the KMC shall act upon the same, subject to compliance of all necessary formalities and shall do the needful in accordance with law positively within a period of **three months** from the date of receiving the application for sanction of building plan from the landlords;
- v) The landlords further agreed that, they shall demolish the existing structure at the said premises positively within a period of

three months from the date of sanction of the building plan by the KMC authority to carry out and implement the said order of the Special Municipal Commissioner and the directions as agreed by and between the parties, recorded herein;

- vi) If any police assistance is sought for by any of the parties, the same shall be provided to them by the local Police Station upon usual terms;
- vii) After receiving the sanctioned building plan, the landlords shall proceed further in accordance with law.
- viii) The landlords have further agreed that, after completion of structure of the proposed building in every respect and receiving the Completion Certificate from KMC to be issued in accordance with law, shall provide the respective occupational spaces to the tenants and occupiers of the building in accordance with the said reasoned order passed by the Special Municipal Commissioner, as referred to above.
- ix) The tenants and occupiers of the said premises shall receive possession of their

respective occupational spaces at the proposed newly constructed building **simultaneously** upon surrender and handover of their respective possessions at their alternative re-allocated places to the landlords, where they shall be provided by the landlords, as directed above;

- x) So long the tenants and occupiers of the said premises shall not surrender and deliver up vacant and peaceful possession of their alternative accommodation to the landlords, the landlords shall withhold the respective allotted spaces for such tenants and occupiers at the proposed newly constructed building.

It is needless to mention, in the meanwhile since a portion of the premises has already collapsed, as submitted by the parties, if any step is required to be taken to avoid any untoward incident and casualties, the landlords shall immediately bring the same to the notice of the KMC authority in writing and in consultation with the KMC authority necessary steps shall be taken in accordance with law.

With the above directions and observations both these writ petitions, **WPA 18716 of 2024** and **WPA**

18301 of 2024 stand **disposed of**, without any order as to costs.

Photocopy of this order be kept with the records of each of the writ petitions.

Photostat certified copy of this order, if applied for, be furnished expeditiously.

(Aniruddha Roy, J.)