

13.05.2024
Item No.22
Court No.6.
S. De

M.A.T. 1293 of 2015
With
I.A. No.CAN/1/2015
(Old No. CAN/8556/2015)
The Kolkata Municipal Corporation & Ors.
Vs
Ratna Ghosh & Ors.

Mr. Barin Banerjee,
Mr. Alok Kumar Ghosh,
Mrs. Sima Chakraborty,
...for the appellants/KMC.

Mr. R.N. Chakraborty,
Mr. T. Das, ...for the private respondent
nos. 1, 2 & 3.

Ms. Chama Mookherji,
Mr. Anujit Mookherji,
Mr. P. Chandra,
Ms. Monisha Chatterjee,
Ms. Chandrani Ghosh,
...for the respondent nos. 4, 5 & 6.

1.By consent of the parties, the appeal and the connected application are taken up together for hearing.

2.In this appeal the order dated February 20, 2015 passed by a learned Judge of this Court in W.P. 37860 (W) of 2013, has been impugned.

3.In support of the appeal, Mr. Ghosh, learned counsel appearing on behalf of the appellants/Kolkata Municipal Corporation (in short "KMC"), at the very outset, draws our attention to internal page no.2 of the order impugned. It is submitted by Mr. Ghosh that while passing the impugned order, learned Single Judge directed that the part of the structure which is

in possession of the writ petitioners shall have to be secured before any demolition is effected and the work pertaining to the ground floor of the building shall have to be undertaken by the writ petitioners.

4. Mr. Ghosh, hands up to us a photocopy of the quotation dated May 7, 2024, submitted by one Bijoy Kumar Enterprise. The relevant part of the said quotation is as under :

“1. As the building is situated inside a narrow lane and there are adjacent building all around, it is very difficult to demolish the building mechanically so we will demolish the building manually for the safety of adjacent building. The Quotation given is based on manual demolition.

2. As the condition of the building is in very poor state the floors of the building are very weak. When the continuous demolition of the top two floors starts, and debris get loaded on the ground floor’s roof, the ground floor structure may collapse at any moment. So it cannot be said that ground floor can be retained.

3. Looking at the condition of the structure the time required to demolish the structure will be around 2 to 3 Months Approximately.”

5.It is submitted by Mr. Ghosh, learned counsel for the appellants/KMC that in the event the demolition of the existing structure and more specifically the first floor and the second floor, is not carried out, it may collapse any moment. It is further submitted that from the said quotation it is clear that in the process of demolition of the first floor and the second floor of the property in question, debris will get loaded on the ground floor roof and on account of accumulation of huge quantity of debris, the ground floor structure may collapse also. It is thus submitted that in order to carry out the demolition of the first floor and the second floor of the building in question, the entire property, more specifically the ground floor which is in occupation of the writ petitioners, is required to be vacated and thus the order impugned is required to be modified for enabling the KMC to carry out the demolition of the said dangerous building in question.

6.Per contra, Mr. Chakraborty, learned counsel for the writ petitioners/private respondent nos. 1, 2 and 3 herein, takes us to page no.21 of the interlocutory application being a copy of notice under Section 411(1) Calcutta Municipal Corporation Act 1980 in respect of the premises in question. It is submitted that after service of such notice upon the present writ petitioners, they approached the

appropriate authority of the KMC for granting permission to repair the said building and on its refusal on November 26, 2013, the writ petitioners approached this Court by filing WP No. 15512 (W) of 2013.

7.It is further submitted by Mr. Chakraborty that challenging the order dated June 19, 2013, passed in WP No.15512 (W) of 2013, the writ petitioners approached the Division Bench of this Court by filing MAT 1143 of 2013, which was disposed of by the said co-ordinate Bench on August 8, 2013, by setting aside the order impugned and by observing as follows :

“The Municipal Corporation shall consider the application already made by the writ petitioners for permission to repair the building. They shall give notice to the interested parties, hear them and shall thereafter pass an appropriate reasoned order in accordance with law within two weeks from date.”

8.It is submitted by Mr. Chakraborty that thereafter the first floor of the building in question was repaired pursuant to an inspection made by the experts of the Jadavpur University. It is thus submitted by Mr. Chakraborty that there is no

ambiguity and/or illegality in the order impugned, since the learned Single Judge has directed the present appellants/KMC to carry out the demolition by securing the part of the structure which is in possession of the writ petitioners.

9.Mr. Anujit Mookherji, learned counsel appearing on behalf of the private respondent nos. 4, 5 and 6 (the owners and developers of the building in question), in course of his submission hands up a copy of the order dated April 25, 2024, passed in WPA 1433 of 2021 with WPA 37860 of 2013. Mr. Mookherji submits that in the aforementioned two writ petitions which have been taken up for hearing by the learned Single Judge conjointly, an order was passed on April 25, 2024, recording the proposal made by the private respondent nos. 4, 5 and 6 that an alternative accommodation would be provided to the occupants of the ground floor (writ petitioners) during the period when demolition would be carried out by the present appellants/KMC in terms of the order dated February 20, 2015. It is further submitted that from the last paragraph of the said order it would appear that on behalf of the writ petitioners consent was given to vacate the ground floor during the period when demolition work would be carried out if alternative arrangement is made.

10.On careful consideration of the entire material placed before us, it appears that there is no dispute that the first floor and the second floor of the building in question are now in dangerous condition and are required to be demolished as soon as possible. In course of argument, Mr. Ghosh contended by placing document that there is every apprehension that while carrying out the demolition of the first floor and the second floor of the building in question, the ground floor roof may be damaged which may cause damage to the ground floor structure and even casualty may occur during such process if the said portion is not vacated. We cannot ignore the apprehension as expressed by Mr. Ghosh in course of his argument.

11.Materials have been placed before us that in course of hearing of WPA 1433 of 2021 together with WPA 37860 of 2013, a proposal has been given by the private respondents to provide an alternative accommodation to the inmates of the ground floor, i.e., the writ petitioners herein during the period of demolition and such proposal has been accepted by the writ petitioners.

12.In view of the aforesaid, we find no reason to restrain the KMC from carrying out the demolition especially when the private respondents are agreeable to provide an alternative accommodation and the writ

petitioners are agreeable to shift there during the process of demolition.

13.Such being the position, while allowing the instant appeal and while setting aside the order impugned before us, we direct the appellants/KMC before us to carry out the work of demolition of the building in question positively within a month from the date of vacating of the building in question by the writ petitioners.

14.It is further directed that the private respondent nos.4, 5 and 6 shall provide an alternative suitable accommodation which must be similar to the floor space (as far as practicable) as is now being occupied by the present writ petitioners within a radius of five kilometers of the said building, preferably within the territorial limits of KMC and the private respondents shall in writing communicate to the writ petitioners with regard to the availability of the said accommodation within a month from the date of passing of this order and the writ petitioners on receipt of such communication shall shift to such alternative accommodation within a fortnight from the date of receipt of such communication and the entire cost of shifting of the writ petitioners is to be borne by the private respondents.

15.Before parting, we make it clear that we have not expressed our view with regard to the existing

tenancy right and/or any other right of the writ petitioners in respect of the ground floor of the building in question and as such the right, title and interest of the present writ petitioners in the property in question if there be any, shall remain unaffected.

16.It is put on record that in course of hearing Mr. Mookherji, learned counsel appearing for the private respondent nos. 4, 5 and 6 submits before this Court that his clients will bear the entire costs of demolition by depositing the same with the office of the KMC as assessed by the KMC within the time fixed by KMC.

17.MAT 1293 of 2015 is thus disposed of along with the application being I.A. No. CAN 1 of 2015 (Old No. CAN/8556/2015) in the light of the observations made hereinabove.

18.Urgent certified photostat copy of this order, if applied for, shall be given to the parties as expeditiously as possible on compliance with all the necessary formalities.

(Arijit Banerjee, J.)

(Partha Sarathi Sen, J.)