

17
01.10.2024
Court No. 2
AGM

**Calcutta High Court
In the Circuit Bench at Jalpaiguri
Appellate Jurisdiction**

WPA 2077 of 2024

Binod Kumar Goel
Vs.
Siliguri Municipal Corporation & Ors.

Mr. Aayush Mitruka. (VC)
Mr. Suresh Kumar Mitruka.
Ms. Shruti Yadav.
Mr. Sujit Swami.

... for the Petitioner.

Mr. Deborshi Dhar.

... For the Corporation.

Mr. Rajat Das.

... For the Private Respondents.

1. Affidavit-of-service filed in Court today be kept with the records.

2. Upon hearing the submissions made on behalf of all the parties, it appears that the landlord/private respondent is not inclined to make any repair of the subject property at this stage.

3. It has been categorically submitted that the building is not in a repairable condition and the owner is not inclined to make any expense for repairing the same. The landlord/private respondent is currently not in possession of the subject property.

4. Learned advocate appearing for the petitioner submits that his client is agreeable to submit an

undertaking before the Corporation to effect the necessary repairs at his own cost.

5. Section 268 of the West Bengal Corporation Act, 2006 permits the addressee of a notice under Section 268(1) of the Act to give an undertaking to execute such work of improvement in relation of the building as will, in the opinion of the Commissioner, render the building fit for human habitation.

6. It appears that the petitioner already filed an undertaking before the Corporation but the order of demolition has been passed without referring to the same.

7. Admittedly, the petitioner is an occupation of a part of the subject property which has been directed to be demolished. The petitioner does have an interest in the subject property.

8. The Commissioner ought to have considered the undertaking filed by the petitioner for making the necessary repairs prior to passing the order of demolition.

9. In view of the above, the Corporation is directed to keep the order of demolition at abeyance till 29th November, 2024 or until a decision is taken by the Commissioner in response to the undertaking to be filed by the petitioner.

10. Leave is granted to the petitioner to file a fresh undertaking disclosing the nature of repairs to be made by him. Only if the said repairs are permissible in law, then the Commissioner shall pass order in favour of such repairs.

11. It is made clear that the work of repairing will be done at the cost of the petitioner and the petitioner will not be entitled to seek refund or adjustment of the same.

12. The same will not create any right or equity in favour of the petitioner being the occupant of a portion of the subject premises. The right, title and interest of the petitioner and the private respondent will be adjudicated by the competent civil court.

13. In the event the Commissioner is of the opinion that the petitioner may be permitted to effect the necessary repairs to make the portion that he is occupying fit for human habitation, then the petitioner shall make the necessary repairs in accordance with the permission granted.

14. The order of status quo passed by the learned civil court in respect of the subject property as reported to be in force will not stand in the way of making the necessary repairs by the petitioner as in the absence of the repairs being undertaken valuable life and property may be lost if an untoward incident takes place.

15. A decision shall be taken by the Commissioner in this regard at the earliest but positively within a period of six weeks from the date of communication of this order.

16. A reasonable opportunity of hearing shall be granted to the petitioner as well as the private respondent prior to passing a final order in the matter.

17. The writ petition stands disposed of.

18. Urgent certified photo copy of this order, if applied for, be supplied to the parties expeditiously on compliance of usual legal formalities.

(Amrita Sinha, J.)