

OD-9

ORDER SHEET

GA No.1 of 2024
WPO No.239 of 2024
IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
ORIGINAL SIDE

LALAN JEE JHA
VS.
THE KOLKATA MUNICIPAL CORPORATION & ORS.

BEFORE:
The Hon'ble JUSTICE AMRITA SINHA
Date:15th May, 2024.

Appearance:
Mr. Mainak Ganguly, Adv.
Mr. Amal Kumar Saha, Adv.
Ms. Granthana Kayal, Adv.
...for Petitioner.

Ms. Nandini Mitra, Adv.
Mr. Sanjay Saha, Adv.
...for Intervener.
(In GA/1/2024)

Mr. Debajyoti Deb, Adv.
Mr. Ayan Mitra, Adv.
Ms. Somdyuti Parekh, Adv.
...for Respondent Nos.8 & 9.

Mr. Alak Kr. Ghosh, Adv.
Mr. Swapan Kr. Debnath, Adv.
... for KMC.

Mr. Debangshu Dinda, Adv.
...for State.

The Court:- The petitioner, claiming to be the one of the tenants of the premises no. 44, Strand Road, Burrabazar Police Station, Kolkata- 700007, has filed the instant writ petition praying for a direction upon the respondent authorities to stop running of the kitchen or the manufacturing unit of the private respondents, Dharam Chand Sonkar and Aditya Sonkar, both tenants of the same premises.

A further direction has been sought for in the form of directing the Corporation to restrain the aforesaid private respondents from displaying any sweets on the footpath in front of the subject premises.

From the documents annexed to the writ petition, it appears that two earlier writ petitions were filed in respect of the self same premises; the first being WPA 8741 of 2022 [Subhas Jadav & Ors. Vs. Kolkata Municipal Corporation & Ors.] where the Court passed an order on 10.01.2023 directing the Corporation to take prompt

necessary steps to take follow up actions consequent to invocation of Section 412A of the Kolkata Municipal Corporation Act, 1980 and ensure that the inmates of the building are removed at the earliest to avoid loss of valuable life and property as the building in question was found to be in a ruinous state.

The aforesaid order was carried in appeal and the Hon'ble Division Bench in M.A.T. 142 of 2023 passed order on 29.08.2023 directing the Commissioner, KMC to initiate requisite proceeding under Section 412A or any other relevant provision of the Act and to conclude the proceeding expeditiously. The Court recorded that before a final decision is taken by the Commissioner, an opportunity of hearing shall be given to the persons who are likely to be affected if the building in question is brought down. The Court further recorded that the owners shall ensure that the lawful occupants are provided alternative accommodation during the period of demolition and reconstruction of the building in question, if occasion arises.

The other writ petition being WPO 145 of 2024 was filed by one Deepak Sonkar wherein an order was passed by this Bench on 27.02.2024 directing the Chief Engineer, Solid Waste Management Department to consider the objection filed by Deepak Sonkar relating to encroachment of footpath for business purpose after giving reasonable opportunity of hearing to all the necessary parties. The Court directed the Chief Engineer, Solid Waste Management Department to devise method/policy by which the footpath in and around the Burrabazar area can be left free for pedestrian movement.

It appears that the instant writ petition is also of the same nature. As the Court already passed order in the earlier writ petition

directing the Chief Engineer, Solid Waste Management Department to devise method/policy to keep the footpaths in the Burrabazar area free for pedestrian movement, accordingly, the Chief Engineer shall continue to keep strict vigil so that the footpaths remain free for pedestrian movement as directed hereinabove.

The Director General, West Bengal Fire and Emergency Services has filed an affidavit before this Court wherein an inspection report is annexed. It appears therefrom that the building in question was inspected and it was found that there is no inbuilt fire detection, fire alarm and fire suppression system installed within the aforesaid building, except some portable fire extinguishers installed inside the kitchen of the shop rooms where the sweetmeats were prepared. The officers of the West Bengal Fire & Emergency Services opined that the building is unsafe from fire and life safety point of view at present.

The officers of the License Department of the Kolkata Municipal Corporation have also filed an inspection report wherein it is mentioned that, on inspection it was found that businesses having certificate of enlistment are being run as sweetmeat sellers with workshops inside the subject premises.

The License Department relies upon clause 6 of the guidelines issued by the Joint Secretary to the Urban Development & Municipal Affairs Department dated 28.08.2020 wherein it has been mentioned that no one shall apply for fresh certificate of enlistment or renewal thereof for any profession, trade and calling in dangerous, ruinous, hazardous buildings as notified by the Building Department, KMC, unless such notification is withdrawn.

The License Department of the Corporation and the Fire & Emergency Services as well as the Chief Engineer of the Solid Waste Management Department of the Kolkata Municipal Corporation are directed to take prompt necessary steps to ensure that no untoward incident takes place at the subject property because of the structural health of the same and also because there is no fire fighting arrangement in the subject premises.

An application for intervention has been filed by Malay Paul and Madhab Porel both claiming to be the tenants of the subject premises. The Hon'ble Division Bench in MAT 142 of 2023 on 29.08.2023 directed the Commissioner, Kolkata Municipal Corporation to take necessary steps. The Commissioner shall take all consequential steps in compliance of the order passed by the Hon'ble Division Bench on 29.08.2023.

The writ petition and the connected application stand disposed of.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties upon compliance of all legal formalities.

(AMRITA SINHA, J.)

nm