

OD-9

ORDER SHEET

WPO No.369 of 2024
IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
ORIGINAL SIDE

AMAR NATH SINGH & ANR.

-Versus-

KOLKATA MUNICIPAL CORPORATION & ORS.

BEFORE:

The Hon'ble JUSTICE AMRITA SINHA

Date : 7th May, 2024.

Appearance:

Mr. Saptansu Basu, Sr. Adv.

Mr. Nirmalya Dasgupta, Adv.

Mr. Rajesh Upadhyay, Adv.

Ms. Surabita Biswas, Adv.

...for Petitioners.

Mr. Biswajit Mukherjee, Adv.

Mr. Swapan Kr. Debnath, Adv.

...for KMC.

Mr. Subhrajit Chakraborty, Adv.

...for Respondent Nos.8, 9 & 10.

Mr. Debjit Mukherjee, Adv.

Ms. Susmita Chatterjee, Adv.

...for the State.

The Court:- Communication dated 22.11.2023 by the Executive Engineer (Civil)/Building, Borough-IV & V requesting the petitioners to submit 'NOC from tenants' of each tenant residing at the premises no. 26, Shibtala Street, Ward No.23, Borough-IV within seven days from receiving the letter is impugned in the instant writ petition.

Specific submission is that there is no requirement under law to submit 'NOC from tenants'. In support of the aforesaid submission, reliance has been placed on the judgment delivered by this Court in the matter of ***The Bengal Bonded Warehouse Association Vs. The Kolkata Municipal Corporation & Ors.*** reported in ***(2017) 4 CHN 6*** wherein the Court recorded that Rule 142 details the relaxation which would be available for construction of a building in place and stead of existing buildings after demolition. Rule 142(3) specifically

provides that every application for availing relaxation of building rules has to be accompanied with documentary evidence of the tenants of the existing building signifying their plans to the demolition thereof and grant of any pre-decisional hearing to the tenants pertaining to the issue of sanction of a building plan is not a mandatory statutory requirement. On an appeal carried from the aforesaid judgment the Hon'ble Supreme Court in Miscellaneous Application No. 569/2020 in SLP(C) No. 26038/2018 passed order on 30th July, 2021 by holding that the condition of filing NOC from the tenants is not required.

The Hon'ble Supreme Court was, however, pleased to record the submission of the learned senior counsel representing the appellants that undertakings will be filed to take care of the tenants' interest in the subject property.

It has been submitted by the learned senior counsel representing the petitioners that the portions which will be allotted to the tenants had already been earmarked in the plan proposal submitted before the Corporation. The list of documents submitted at the time of obtaining the sanction plan contains a list of the tenants of the subject premises.

Learned advocate representing the private respondents submits, upon instruction that, the issue of ownership of the subject property is sub judice before the learned civil Court. Until and unless the said issue is decided, the Corporation ought not to proceed with the sanction of the plan proposal. The private respondents are also concerned about their tenancy.

It has been indicated in the order passed by the Hon'ble Division Bench in the matter of The Bengal Bonded Warehouse Association (supra) that there

is sufficient provision in law to take care of the interest of the tenants. The place where the tenants will be rehabilitated is earmarked in the plan proposal that has been submitted.

Let undertaking be filed by the petitioners before the Corporation disclosing their intention to rehabilitate the tenants and the place where they will be rehabilitated.

Steps shall be taken by the Corporation for consideration of the plan proposal at the earliest but positively within a period of eight weeks from the date of submission of undertakings and documents from the end of the petitioners.

It goes without saying that the principle of lis pendens will apply in the fact and circumstances of the instant case.

The impugned communication is set aside.

Report filed by the engineers of the Corporation signed on 03.05.2024 and the report filed by the Officer-in-Charge, Posta Police Station be retained with the records.

The writ petition stands 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.)