

ORDER SHEET

WPO/274/2018
IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
ORIGINAL SIDE

BINOD KUMAR SHAH
VS
THE KOLKATA MUNICIPAL CORPORATION & ORS

BEFORE:
The Hon'ble JUSTICE RAI CHATTOPADHYAY
Date: 10th May, 2024.

Mr. Biswarup Bhattacharyya, Adv.
Mr. Raja Adhikary, Adv.
Mr. Mrinal Das, Adv.
Ms. Ruksar Parveen, Adv.
...for the petitioner
Mr. Alok Kr. Ghosh, Adv.
Mr. Mihir Kundu, Adv.
...for K.M.C.
Mr. Santanu Mitra, Adv.
Mr. Subhabrata Das, Adv.
...for the State

The Court: The writ petitioner is having thika tenancy in the concerned property with regard to which, the respondent Corporation has issued demolition notice. The writ petitioner is before this Court, to seek an order canceling the Corporation's order of demolition of the said premises being numbered 37B, Acharya Jagadish Chandra Bose Road, P.S. Park Street, Kolkata-700017.

The structural stability of the building is in question.

By dint of this Court's order, Survey Commissioner/Engineer was appointed, to examine the health of the building. A comprehensive report is submitted in Court. Perused the same. The report consists of the engineering detail as regards the construction of the said building and its

stability. Final conclusion has been reached by the inspecting head (Department of Civil Engineering, Jadavpur University, Kolkata) that the condition of the building is not stable and not in good condition for safety of human lives. On the basis of inspection and non-destructive tests, the following points were jotted down by the head of the inspection team.

- “ 1. In UPV result most of the test results are in poor category which indicates the concrete has already lost its integrity and homogeneity.*
- 2. In carbonation test shows that the concrete is losing its alkalinity which indicate that the reinforcement bar now can start to corroded and loose its load carrying capacity.*
- 3. Half Cell Potential test also indicates the corrosiveness nature of the concrete.*
- 4. The rebound hammer test indicates moderate results.*
- 5. In various places in the building the cracks in concrete and tilting of the building indicates that the building is now in severe condition.*
- 6. Most importantly the angular distortion exceeds the allowable limit as per Indian Codal provisions for RCC structure.”*

Mr. Biswarup Bhattacharyya appears on behalf of the writ petitioner. He says that the Commissioner of Thika Tenancy under the West Bengal Thika Tenancy (Acquisition and Regulation) Act, 2001, shall have the authority under the law to decide as regards the concerned premises, as mentioned above. Further, he has submitted on the basis of the report of an Engineer, namely, Nirman Consultants, that though the condition of the building is not good as suggested from the said report, but such

deteriorating of the same is curable. On behalf of the writ petitioner he has proposed that the writ petitioner is agreeable to undertake whatever steps are necessary to be taken for restoration and preservation of the said building. He has urged that instead of demolition of the building, which is an abode and place of business of the writ petitioner for decades, necessary steps may be taken for restoration of the same.

On behalf of the respondent Municipality profound reliance has been placed on the report of the Commissioner/Engineer as submitted in Court and mentioned above. The danger to the human habitant and life is the focal point at which the respondent Municipal Corporation has concentrated its submissions on. It is submitted that the condition of the building would be endangering the life and property of the other person in the locality and in that event demolition of the same would be the only possible solution to save loss of lives and properties.

Perused the report of the Commissioner/Engineer as has been submitted in Court pursuant to this Court's order. Also perused the report of the engineer obtained by the writ petitioner from said Nirman Consultants. The common feature in both is about unstable and degenerating condition of the building. But the parties differ regarding if the building should be demolished or can be restored for habitation and being used. To determine this question I find it proper to refer the issue to the respondent no. 2/ the Municipal Commissioner, to hear the parties on the point and consider both the reports of the Engineers as discussed above.

After that the respondent no. 2 shall come to a reasoned finding as to the measures to be taken concerning the said building. Obviously, since the writ petitioner has been occupying the said building for decades, the respondent no. 2 shall pre-dominantly keep in mind regarding the possibilities for restoration of the said building while deciding the issues involved.

This Court does not want to direct the respondent no. 2 to make hurried decision in this regard, but to proceed only after thorough consideration of all the aspects, pros and cons, relating to the matter. Still it would be beneficial for all concerned, that the Municipal Commissioner/ respondent no. 2 finally comes to a conclusion in this regard, within a period of three months from the date of communication of this order.

With the direction as above, this writ petition is disposed of. Let the petitioner submit before the respondent no. 2, copies of the two reports of the respective engineers, as mentioned above, for him to take appropriate decision.

(RAI CHATTOPADHYAY, J.)

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