

08.04.2025
Sl. No.26
akd

W. P. A. 16277 of 2024
(CAN 3 of 2024)
(CAN 6 of 2025)

[Arjun Shaw & Ors. -Vs- The State of West Bengal & Ors.]

Mr. Chinmoy Paul
Mr. Archan Dutta
Ms. Aditi Bhattacharyya
Ms. Arpita Palit
... .. for the petitioners

Mr. Alok Kumar Ghosh
Mr. Barin Banerjee
Ms. Manisha Nath
... .. for the KMC

Sk. Rezaul Islam
... .. for respondent no.7

Mr. Tarapada Das
... .. for respondent no.9

Mrs. Sipra Mazumdar
Ms. Prativa Ghatak
... .. for the State

1. Petitioners have preferred the present writ petition seeking a writ of mandamus against respondent nos.1 to 8 not to interfere with the peaceful possession of the respective shops occupied by them. They have also prayed for removal of the alleged unauthorized construction carried out by the respondent no.7 herein.
2. It is the case of the petitioners that they were tenants/occupiers of the premises namely, Beniapukur Bazar bearing No. 70, Hare Krishna Konar Road, P.S. Beniapukur, Kolkata. On or about November 2007, the erstwhile owner of the said bazaar sold the property to respondent no.7. Thereafter, the petitioners and other tenants executed an agreement with respondent no.7 and had issued a 'no objection' certificate for

construction and development of the said bazaar. The respondent no.7 got the plan sanctioned from the respondent-Kolkata Municipal Corporation for construction of a G+4 storied commercial-cum-residential building at the said premises.

3. Petitioners submit that during the said construction process, they noticed that respondent no.7 is carrying out the construction work in contravention of the sanctioned plan. Petitioners had preferred a complaint before the respondent-Kolkata Municipal Corporation, however, no action was taken against the said unauthorized construction. Being aggrieved, they preferred a writ petition being WPA 14806 of 2021. The said writ petition was disposed of by order dated 25.11.2021 directing the respondent-KMC to inspect the premises in question and after affording an opportunity of personal hearing to all the parties, pass a speaking order in accordance with law.

4. It is the contention of the petitioners that the respondent-KMC failed to carry out the said direction.

5. Later the petitioners got the demolition order dated 02.05.2023. The relevant portion of the order is set out hereinbelow :-

“Again it is requested to P.R. to demolish the existing structure on open space within three months time considering the situation at site failing which legal action will be taken by department for compliance and violation of condition of sanction. All the strip of land must be thrown.”

6. Being aggrieved by the said proposed demolition order, petitioners have preferred the present writ petition.

7. The matter came up for hearing before this court on 24.06.2024 and the respondent-KMC was restrained from demolishing the shop rooms of the petitioners for a period of seven days from date.

8. The interim order was extended further and is still in operation.

9. The Executive Engineer (Civil), Building Department, Br.-VI, Kolkata Municipal Corporation had filed a report dated 03.08.2024 which reads as follows :-

“Kolkata Municipal Corporation accorded two nos. sanction plan vide B.S. plan no.2010060043 sanction dt. 26.11.2010 for erection of Basement+IV storied residential building and further accorded a revised plan vide BS plan vide no.2012060061 sanctioned dt.09.01.2013 for erection of G+IV storied residential building respectively and the second plan is valid till 08.01.2018 subject to demolition of existing structure. In the said plan there is shown 25 nos. existing shops in the existing structural plan and proposed 31 nos. shops in the sanction plan vide no.2012060061 sanctioned dt. 09.01.2013. During inspection it has found that structure is more or less completed except some finishing works. Some of the tenants are rehabilitated in the newly constructed building in the ground floor and there are some tenants found still running their shops in the old existing structure and the said old existing structure is situated over the gifted strip of land as shown in the said B. S. plan. In the mean time department inspected the premises and during inspection it was found that Person responsible made some new shops over gifted strip of land. In this regard Building department issued a stop work Notice u/s. 401 of KMC Act, 1980 on 24.11.2021 and police intimation was sent to the local Police station (Beniapukur). The person responsible violated the Conditional sanction as mentioned in the B. S. plan. Accordingly a D/Sketch plan was prepared showing old and new shops and entire D/Sketch file was placed before Special Officer (Building). The Special Officer passed an order ‘P.R. to demolish the existing structure on open space within three months time considering the situation at site failing which legal action will be taken by department for compliance and violation of condition of sanction. All the strip of land must be thrown’. In the meantime the Hon’ble High Court passed an order dated 16.11.2022 in WPA 18870 of 2022 (Md. PerwezAlam vs. The K.M.C. and Ors.). Thereafter an order has been passed by a Special Officer (Building) on 08.11.2023 directing the building department to demolish the existing structure on the mandatory open space. Since the person responsible did not take any steps, the KMC authorities took steps for execution of the order of the Special Officer (Building). In the meantime a Contempt Application being CPAN 527 of 2023 has been filed by Md. PerwezAlam in which an order has been passed by this Hon’ble Court on 07.12.2023. Now the person responsible cannot complete the construction work as the validity of the sanction plan has been expired and also the person responsible is unable to revalidate the sanction plan as there is a stop work notice U/S. 401 of KMC Act, 1980 inforce against the case premises.”

10. This court with an intention to resolve the present dispute between the parties had referred the matter to the Mediation and

Conciliation Committee, High Court, Calcutta vide order dated 27.09.2024.

11. Learned Mediator had submitted the final report dated 05.11.2024 indicating that the matter has been amicably settled between the parties based on the directions and conditions mentioned therein. The terms of the said final report are as under :-

“ FINAL REPORT OF MEDIATION

All responsible concerned are present (except Respondent no.8, O.C. of PS.).

The efficacy, utility of mediation process is discussed threadbare in presence of them.

After prolonged deliberations since the other day, it is heartening to mention that the parties have voluntarily buried the hatchet once for all in view of the following terms and conditions :

- i) The respondent no.7, Harsh Bardhan Agarwal shall construct new construction strictly in accordance with sanctioned plan granted by KMC without making any departure whatsoever;*
- ii) The respondent no.7 in the mean time shall arrange a covered shade within close proximity of case property so as to accommodate all the businessman – be a shop holder or a vendor or an occupier running business under the open sky therein;*
- iii) All such persons i.e. occupiers (petitioners) shall forthwith vacate the premises of their occupation except Arjun Shaw, the petitioner no.1;*
- iv) In doing so the respondent no.7 shall deposit within a week Rs.10,00,000/- (Rupees Ten lacs only) positively at the office of Registrar General, High Court, Calcutta as a security and guarantee to prove his bonafides that surely he will make new construction and accommodate all the persons who are in occupation of the premises;*
- v) The respondent no.7 shall accommodate all such shop owners or business personnel inside the premises of new construction made according to the sanctioned plan of KMC;*
- vi) The respondent no.7 also undertook to keep the premises of petitioner no.1 inside the sanctioned plan as it is reported that a fraction of his occupation is lying outside the sanctioned plan;*
- vii) All such exercises shall be completed within a period of 4 (four) months hence;*
- viii) In case of complete rehabilitation of the petitioners in the newly constructed area the respondent no.7 shall be permitted to withdraw his security deposited sum of Rs.10,00,000/- (Rupees Ten Lacs) from the Registrar General, High Court, Calcutta;*
- ix) A request letter separately be sent to the (with due respect) Registrar General, High Court, Calcutta to take pain to take security deposit of the said amount as mentioned above and to return the same as soon as the completion work will be over and proper intimation will be given by the respondent no.7*

through the Mediation Centre of the Hon'ble High Court;

- x) I also make it clear that no one concerned shall cause any impediment in the construction work to be undertaken by the respondent no.7;*
- xi) As soon as the rehabilitation of all business man will be complete the temporary tin shed shall be dismantled and the position restored ante;*
- xii) The respondent no.7 shall arrange the temporary shed for shifting the present occupiers within fifteen days hence and within three days thereafter all occupiers including petitioner no.1 shall vacate the premises so as to enable the respondent no.7 to undertake the construction work.*

I make it clear that the dispute shall stand settled once for all. There shall not be any reopening of the dispute in future in any manner whatsoever.

I also make it clear there is no such provision of appeal against such order.

In case anyone flouts or does not abide by the terms, the case shall be returned to the Hon'ble Court as non-settled case."

12. Petitioners have preferred an application being CAN 6 of 2024 seeking extension of the interim order passed vide order dated 24.06.2024. It is their contention that in pursuance of the final report of the Mediator, the respondent no.7 had constructed temporary shops, however, they are not willing to shift there as according to them, the shops are too small and not sufficient for them.

13. This court has heard the learned Advocates for the respective parties and has examined the materials on record.

14. As per report of the respondent-KMC, respondent no.7 is carrying out the construction as per the sanctioned plan. However, respondent no.7 has failed to demolish the old unauthorized structure completely. It is the stand of the respondent-KMC that the old structure has to be demolished completely. Respondent no.7 states that he has not been able to demolish the said old structure completely since the petitioners are occupying some portion of the said structure.

15. Hence, the matter was referred to the Mediation and Conciliation Committee, High Court, Calcutta for arriving at an

amicable settlement. The final report of the Mediator has offered a temporary alternate accommodation to the petitioners. Petitioners are happy with the said settlement. They are also ready to vacate the said premises.

16. As agreed in the mediation process, respondent no.7 is offering temporary shops to the petitioners till the entire building is constructed. Unless the existing structure, which is unauthorized in nature, is demolished, respondent no.7 will not be in a position to develop the said bazaar as per the sanctioned plan.

17. Hence, the present writ petition is disposed of strictly in terms of the final report of mediation. It is made clear that the respondent no.7 shall act in terms of the final report of the Mediator and accommodate the petitioners at the temporary site for the time being till the construction of the new building is over.

18. With the aforesaid observations, the present writ petition is disposed of.

19. In view of disposal of the present writ petition, connected applications being CAN 3 of 2024 and CAN 6 of 2025 are disposed of.

20. Interim orders, if any, shall stand vacated.

21. Respondent-Kolkata Municipal Corporation authorities shall ensure that the construction is carried out in terms of the sanctioned building plan.

22. Parties shall remain bound by the settlement agreement dated 05.11.2024 arrived at before the Mediator.

23. Since no affidavits have been filed by the respondents, the allegations made in the writ petition shall not be deemed to have been admitted.

24. There shall be no order as to costs.
25. Let urgent Photostat certified copy of this order, if applied for, be supplied to the parties on usual undertaking.

(Gaurang Kanth, J.)