

22.09.2025
Sl. No.27
tkm

W.P.A. 21796 of 2025

***[Chandi Charan Das & Co (P) Ltd. -Vs- Kolkata
Municipal Corpn. & Ors.]***

Mr. Souradipta Banerjee
Mrs. Fatima Hassan
Mr. R Mullick
... .. for the petitioner
Mr. Achintya Banerjee
Mr. Nilanjan Chatterjee
... .. for the KMC
Mr. Debjit Mukherjee
Ms. Priyanka Jana
... .. for the State
Mr. Tanmoy Mukherjee
Mr. D Khan
Ms. Apple Mughali Jimu
... .. for respondent nos. 5-7
Mr. Debasis Sur
Mr. Mrinmoy Chatterjee
... .. for respondent no. 8

1. The petitioner has preferred the present writ petition seeking a direction upon the respondent corporation to immediately seize and resist from carrying out any demolition work beyond the declared unsafe portion of the building situated at premises no. 121/4K and 121/4L/1 Manicktala Main Road, Kolkata and further to quash memo no. B/87/III/25-26 dated 13.8.2025 to the extent it affects the petitioner's tenancy in the said premises.

2. It is the case of the petitioner that the petitioner company i.e., Chandi Charan Das & Co. (P) Ltd., was inducted as a tenant on 01.11.1957 in the entire ground floor of premises no. 121/4K

Manicktala Main Road, Kolkata. The tenancy was created by the then owner of the premises and has continued uninterrupted for nearly seven decades. The premises subsequently partitioned by the erstwhile owners and had been assigned to separate numbers as mentioned above. However, the tenanted portion i.e., the ground floor continued to remain in the possession of the petitioner without any physical partition. The petitioner used to pay the rent to the respondent, but a dispute arose and the respondent stopped accepting the rent. Consequently, the petitioner has been depositing the rent before the Rent Controller. On 02.08.2025, a portion of the two-storied structure at 121/4K collapsed. Thereafter, on 13.08.2025, the respondent corporation issued the impugned memo no. B/87/III/25-26 under section 412(2) of the Kolkata Municipal Corporation Act, directing vacation of the said premises.

3. It is the contention of the petitioner that the notice was issued without conducting any proper inspection and without affording the petitioner an opportunity of hearing. Being an occupier, he ought to have been granted an opportunity of hearing. The petitioner also alleges that the respondent municipality is acting in collusion with the landlord

and the impugned orders have been passed to evict the petitioner.

4. The petitioner has further contended that he had instituted a Title Suit no. 198 of 2025 before the learned Civil Judge (Sr. Div.) Sealdah against the private respondents, wherein the respondent corporation has also been added as a proforma party respondent. Vide order dated 29.8.2025 the learned civil court was pleased to restrain the private respondents from evicting the petitioner from the said premises without following the due process of law till 24.09.2025.

5. It is the contention of the petitioner that he has been a tenant in the subject premises for several decades and that his right to alternative accommodation cannot be ignored by the respondent while removing the petitioner from the said premises.

6. It is further submitted by the petitioner that the said action of the respondent corporation in proceeding with the demolition action without granting an opportunity of hearing to the petitioner is in contravention of section 412 of the KMC Act.

7. Learned counsel for the petitioner has placed reliance on the judgments of this Court in *Raj Kumar Mundra & Ors. v. Vettyattil Ravindran @ Ravindran & Ors.* Report as 2007 (1) CHN 620,

(decided on 16th November, 2006) and *Mrs. K. Suleha Begum v. State of West Bengal & Ors.* reported as 1992(1) CLJ 389, (decided on 3rd March, 1992). It has been contended, on the strength of the aforesaid authorities, that the petitioner, being a tenant, cannot be dispossessed from the subject premises except in accordance with due process of law, and that the petitioner is entitled to an opportunity of hearing before the respondent corporation proceeds with any action of eviction.

8. It is further submitted that the landlord and the respondent corporation cannot act in concert for the purpose of passing an order of demolition, as such action would directly prejudice the rights of the petitioner and effectively result in his eviction from the subject premises.

9. Learned counsel for the respondent corporation submits that the building under consideration is in a dilapidated and dangerous condition. He further draws the attention of this Court to a newspaper article published in 'Times of India' wherein it was reported that two kids, among five others, were injured due to the collapse of the present building in question.

10. It is further submitted that a portion of the building had already been collapsed and the remaining portion is liable to fall at any point of

time. He further submits that the petitioner is not in occupation of the premises as the same has become uninhabitable. However, he continues to use a part of the structure as godown.

11. Learned counsel for the respondent contends that merely to protect the tenancy rights claimed by the petitioner, the threat to life and property of the public at large cannot be put at risk. It is therefore, urged that the respondent is justified in carrying out the demolition activity by invoking the emergent powers vested under section 411(4) of KMC Act 1980.

12. Learned counsel for the private respondent Nos. 5 to 7 contends that a civil suit is presently pending adjudication before the Learned Civil Court. It is submitted that the petitioner instituted the said suit on 29th August, 2025, wherein the respondent-corporation has been impleaded as a proforma respondent. However, in the plaint so filed, the petitioner has made no reference whatsoever to the unfortunate incident dated 02.08.2025, wherein a portion of the building collapsed, resulting in grievous injuries to five persons, including two minor children.

13. He further points out that the petitioner had withheld all these facts solely to protect his tenancy rights and that the private respondent has no role in

the passing of the impugned demolition order. The same has been passed by the respondent corporation by invoking his emergent powers under Section 411(4) of KMC Act, in view of the circumstances in which a part of the building had already collapsed. The said provision reads as under:

“4) [\(a\)](#) Notwithstanding anything contained in the foregoing sub-sections, the Municipal Commissioner may, forthwith or with such notice as he thinks fit, demolish, repair or secure or cause to be demolished, repaired or secured, any such wall or building or thing affixed thereto, on the report of the Chief Municipal Architect and Town Planner, certifying that such demolition, repair or securing of the building, wall or thing is necessary for the safety of the public or the inmates of the building.

[\(b\)](#) In any such case the Municipal Commissioner may cause the inmates of the building to be summarily removed from the same or such portion thereof as he may consider necessary.

[\(c\)](#) All expenses incurred by the Municipal Commissioner in taking action under this sub-section shall be paid by the owner of such wall, building or thing.”

14. Learned counsel for the private respondent also draws the attention of this Court to the supplementary affidavit filed by the petitioner, wherein a report by the private engineer regarding

the stability of the building has been placed on record. The report dated 18.09.2025 reads as under:

“Purpose of survey : Director of the company, wants to pay Hon’ble High Court, so that demolition process is stopped for 3 months’ period, so that machineries, furniture and other space parts are removed to a safe place. The building is own narrow road, where trucks cannot enter, as such shifting has to be made by small vans for which small packets are to be made. Since large quantity of debris are dumped on those articles, number of labor’s are to be hired for clearance of debris and to remove the machineries out of that. At this moment, because of festival and Puja etc, labours are seldom available.”

15. It is further recorded that the building is in an absolutely unsafe condition for human habitation and is liable to collapse at any time. Although the engineer’s opinion appears to have been primarily directed towards the removal of the articles lying within the premises, he has categorically opined that the structure is dangerous, over 150 years old, and susceptible to imminent collapse. Accordingly, the Engineer opined that the petitioner may be permitted to remove his articles from the said premises within a period of two months after the Puja vacation.

16. Though this court is surprised that if the engineer himself submits that the building is dangerous, completely uninhabitable and unsafe,

then the suggestion that it can sustain for three months in the opinion of this Court is an aberration and cannot be relied upon.

17. This court has heard the arguments advanced by the respective parties and has perused the material on record.

18. Section 412 of the KMC Act deals with the power of the municipal corporation to order the vacation of the building under certain circumstances, the said provision reads as under:

“412. Power to order building to be vacated in certain circumstances.

(1) The Municipal Commissioner may, by order in writing, direct that any building, which in his opinion is in a dangerous condition or is not provided with sufficient means of egress in case of fire or is occupied in contravention of section 396 or section 403, be vacated forthwith or within such period as may be specified in the order :Provided that at the time of making such order, the Municipal Commissioner shall record a brief statement of the reasons therefor.

(2) If any person fails to vacate the building in pursuance of such order, the Municipal Commissioner may direct any police officer to remove such person from the building and the police officer shall comply with such direction.

(3) The Municipal Commissioner shall, on the application of any person who has vacated or has been removed from any building in pursuance of any order or any direction, as the case may be, under this section, reinstate such

person in the building as soon as the circumstances permit.”

19. The purport of section 412 of the KMC Act is to vest the municipal commissioner with emergent powers to secure the immediate vacation of the premises which, in his opinion, are in a dangerous condition, lack sufficient means of ingress and egress in case of fire, or are occupied in contravention of law. The provision is intended to safeguard life and property in situations of imminent peril and authorises even forceful removal through police assistance in case of non-compliance with the commissioner’s directions. Although ordinarily the principles of natural justice requires that the affected parties be afforded an opportunity of hearing, in cases of emergency, such as where a portion of the structure has already collapsed or where there is imminent danger to human life, the requirement of providing a hearing must yield to the necessity of preventing actions that may endanger human life. In such circumstances, the duty of the commissioner is to act promptly to avert the disaster, while the safeguard of reinstatement remains available once the unsafe or unlawful condition has been remedied.

20. In the present case, it is admitted that the building had become unsafe. The impugned order was passed by the respondent authority after

considering the report of the corporation's engineer, which declared the building to be unsafe and in a dangerous condition.

21. In the present case, a portion of the building has already collapsed and the remaining structure is in imminent danger of falling. It was, therefore, incumbent upon the respondent-corporation to take immediate preventive measures to safeguard human life. The action taken under Section 412(2) of the Kolkata Municipal Corporation Act, directing the petitioner to vacate the premises to facilitate demolition, cannot be faulted. The petitioner has already instituted a title suit to establish his tenancy rights, which he is at liberty to pursue before the competent forum. The judgment relied upon by the petitioner is distinguishable on facts, as no material has been placed on record to substantiate the allegation that the private respondents acted in collusion with the corporation to evict the petitioner. The demolition and vacation orders have been passed solely in view of the imminent threat posed to public safety. It is further observed that a dilapidated and unsafe structure cannot be allowed to stand merely for the preservation of tenancy rights.

22. The petitioner shall be at liberty to remove the articles claimed by him from the godown. To

facilitate such removal, the petitioner may submit an application to the respondent corporation. Upon receipt of a proper application, the respondent-corporation shall permit the petitioner to remove the said articles and shall grant him liberty to do so within 24 hours from the filing of the application.

23. Respondent No. 8 is also granted liberty to file an application for the removal of goods, and the respondent corporation shall decide the said application in accordance with law.

24. With the above observations, the present writ petition is dismissed.

(Gaurang Kanth, J.)