

**IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
ORIGINAL SIDE**

Present :-

THE HON'BLE JUSTICE SHAMPA DUTT (PAUL)

WPO/1175/2021

**SETUKRIT PROPERTIES LIMITED
VS
THE KOLKATA MUNICIPAL CORPORATION & ORS.**

For the Petitioner	:	Mr. Dhiraj Trivedi, Sr. Adv. Mr. Avinash Kankani, Adv. Mr. Suman Majumder, Adv.
For the KMC	:	Mr. Alak Kumar Ghosh, Adv. Ms. Piyali Sengupta, Adv.
For the Respondent nos.7 & 8	:	Mr. Subrata Kumar Basu, Adv. Mr. U. S. Menon, Adv. Mr. Abhirup Chakraborty, Adv.
For the Respondent no.11	:	Mr. Biswajit Kumar, Adv . Mr. Vidhya Bhusan Upadhyay, Adv.
For the Respondent no.12	:	Ms. Chandreyi Alam, Adv. Ms. Runu Mukherjee, Adv.
Hearing concluded on	:	16.01.2025
Judgment on	:	30.01.2025

Shampa Dutt (Paul), J. :

1. The present writ application has been preferred praying for a direction upon the respondent nos. 7 and 8 to comply with the directions as contained in the notice dated 5th July, 2021 issued under Section 411(1) of the Kolkata Municipal Corporation Act, 1980 in compliance with the order dated 13th September, 2018 passed by the Hon'ble Justice Debangsu Basak in W.P. No. 435 of 2018 (Magnum Enterprise – Vs. – The Kolkata Municipal Corporation and Ors.) and a direction upon the respondent authorities and each one of them, their men, staff, officers, agents, subordinates, assigns and associates, to take steps in exercise of its power under Section 558 of the Kolkata Municipal Corporation Act, 1980 to execute the works required as per the notice dated 5th July, 2021.
2. Admittedly, there is a suit for eviction pending since 2005 against the tenants of the premises. Vide order dated 13.09.2018 a Co-ordinate Bench of this Court in W.P. 435 of 2018 had passed an order directing as follows:-

“This is the third writ petition in respect of the same premises for similar notices of repair and demolition. The second notice of the notices was assailed at the behest of the landlord of the premises. Such notice was quashed. In the appeal carried therefrom an observation was made by the Appeal Court that, the notice may be a mechanism to evict the tenant. Be that as it may, since admittedly, the premises concerned is in a state of disrepair and the petitioner as an occupant is willing to undertake repair of

the building situated at the rear portion of the premises, in my view, interest of justice should be subserved by permitting the petitioner to do so without the petitioner being vested with any additional equity, right, title and interest in respect of the building for the repair it makes thereto, in any manner whatsoever. In such circumstances, the petitioner is at liberty to approach the Kolkata Municipal Corporation authorities for the purpose of repairing the rear building of the premises, in accordance with law. Upon such approach being made, Kolkata Municipal Corporation authorities are at liberty to consider such application, in accordance with law. KMC authorities are at liberty to reject such application if they deem it appropriate. If they reject the same, they will give reasons for rejection. They will also afford a reasonable opportunity to the petitioner to correct the proposal for repair, if the initial proposal is rejected by KMC. KMC authorities will ensure that, the work of repair is done strictly, in accordance with law. It will ensure that, there is no deviation from the original sanction granted and that, the work undertaken by the petitioner is limited to the repair of the rear portion of the building concerned.

It is clarified that, the work of repair will not create any equity or right, title and interest in favour of the petitioner. It will not prejudice the parties to the suit for eviction. The respondent no. 6 is at liberty to execute any decree for eviction, in accordance with law, notwithstanding this order and notwithstanding if the repair work undertaken in terms of this order remains incomplete on the date of the execution of the decree.

On the prayer of the learned Senior Advocate appearing for the petitioner, two weeks time is granted to the petitioner to approach the Corporation authorities for repair. It is clarified that, from now on, the petitioner is responsible for all and any damages at the rear building of the premises concerned.

Learned Senior Advocate appearing for the petitioner expresses an apprehension that, the respondent no. 6 is likely to interfere in the course of repair, if the petitioner is permitted to do so by the Corporation. Leaned Advocate appearing for the respondent no. 6 submits that, such apprehension is misplaced and that, there will be no such obstruction.

The impugned notice dated December 23, 2017 stands modified to the extent as indicated herein. The Corporation authorities are, however, at liberty to proceed, in accordance with law, if the petitioner fails to carry out the repair in terms of this order or in terms of the directions issued by it from time to time.

In such circumstances, W.P. No. 435 of 2018 is disposed of. No order as to costs.”

3. Admittedly, no appeal has been preferred against the said order.
4. An order dated 05.07.2021 has been passed by the Executive Engineer(C) Building of the Kolkata Municipal Corporation issuing a notice for demolition of the dangerous portion and repair all the repairable portion and other directions.
5. The Kolkata Municipal Corporation has submitted an extensive report in respect of the premises in this case on the direction of a Co-ordinate Bench of this Court in the present writ petition. The final conclusion and the inferences in the said report is as follows:-

“D: DISCUSSIONS AND INFERENCES:

1. From the physical inspection and detail study, it can be clearly understood that except one service block all the building blocks in the subject plot of land have distinct signs of distresses.

2. The load bearing brick walls were cut at several locations for laying of concealed service lines, which is not at all technically right for any load bearing wall structures if not designed accordingly.

3. Deterioration of strength for Lime Surki mortar within the load bearing walls is a general weathering effect for almost all the load bearing walls was noticed.

4. Very wide and deep cracks noted on load bearing walls is common at a number of locations.

5. Growth of trees and their root ramification is severe on almost all the external surfaces.

6. From the physical study of present condition of the structures, it is clear that the lower floor, particularly the ground floor in some portion is in a better condition. But the condition of the upper floors is in such a state that any of its part may collapse in due course of time which may cause loss of life in the already occupied lower floors.

7. Restoration must be looked at in consideration of durability and sustainability. Most of the building structures on the subject premises are in such a distressed state that, without demolition in part or full any restoration work will not be durable.

E: CONCLUSION

In consideration of the detail physical study of the building structures, any restoration activity without demolition in part or full cannot be a durable solution particularly for western building block (Block-2). Thus, any part repairing or restoration activity in the building will be an unsustainable proposition.”

6. The contention of the tenants/respondents is that their occupancy/possession in the premises in question may be assured by

the petitioner, the Kolkata Municipal Corporation and the Court, considering their valuable right as a tenant and thus being occupiers.

7. Section 412 of the Kolkata Municipal Corporation Act, 1980 lays down:-

“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.”

- 8.** The said provision under the Act provides relief to the occupants of such premises in respect of their possession as they are to be reinstated.
- 9.** The respondent/tenants apprehend that even though such a provision exists, it is uncertain as to when they will be rehabilitated/reinstated as

the petitioner may choose not to make any construction for years to come, which shall prejudice the right of the respondent tenants.

10. Considering all these facts, materials on record and on hearing all the stakeholders, **the writ application is disposed of** with the direction that the Municipal Commissioner shall conduct a hearing considering the report filed before this Court by the Kolkata Municipal Corporation dated 17th January, 2022 and take a decision in accordance with law to give effect to the notice dated 5th July, 2021 which has been issued in compliance with the order dated 13th September, 2018 passed by the Co-ordinate Bench in W.P. 435 of 2018. The said hearing is to be concluded positively within 30 days from the date of this order. The conclusion of such hearing is to be intimated to all the parties concerned.
11. The Municipal Commissioner while considering the matter/dispute as directed shall keep in mind the beneficial legislation being Clause 3 of Section 412 of the Kolkata Municipal Corporation Act, 1980 and taking that into consideration shall pass necessary directions to protect the rights of the tenants as per the said provision of Kolkata Municipal Corporation Act and to do so, is at liberty to take necessary undertaking on affidavit from the petitioner herein.
12. **The writ petition being WPO/1175/2021 is thus disposed of.**
13. All connected applications, if any, stand disposed of.
14. Interim order, if any, stands vacated.

15. Urgent certified website copy of this judgment, if applied for, be supplied expeditiously after complying with all, necessary legal formalities.

[Shampa Dutt (Paul), J.]