

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
(ORIGINAL SIDE)**

Present:

The Hon'ble Justice Rai Chattopadhyay

WPO 1311 of 2021

Arindam Ghosh

Vs.

The Kolkata Municipal Corporation and Ors.

For the Petitioner : Mr. Abhratosh Majumdar, Sr. Adv.
: Mr. Arif Ali
: Ms. Bikash Kumar Roy

For the KMC : Mr. Alok Kumar Ghosh
: Mr. Dwijadas Chakraborty

For the Private Respondent : Mr. Sanjoy Basu
: Mr. P.B. Mullick

Judgment on : **07.11.2025**

Rai Chattopadhyay, J. :-

1. An order of the respondent No. 4 / the Director General (Building), Building Department, Kolkata Municipal Corporation (in short 'KMC'), dated October 09, 2021 and a corrigendum thereof dated October 26, 2021 are under challenge, in this writ petition.

- 2.** The petitioner is a tenant at premises No. 80, Bentinck Street, Kolkata-700001, who says to have occupied 3802 sq. ft. carpet area on the Northern and North Eastern portion of the 1st floor of the said premises. He pays a monthly rent of Rs. 1225/-. Respondent No. 7 is the co-owner of the premises Nos. 80 and 81 Bentinck Street, Kolkata -700001, 1A Grant Lane, Kolkata -700012 and 80/5 Bentinck Street, Kolkata-700001. According to the writ petitioner, the premises Nos. 80 and 81 Bentinck Street are presently in a dilapidated and ruinous condition.
- 3.** The petitioner has mentioned about receipt of a notice dated April 22, 2019, under Section 412A of the Kolkata Municipal Corporation Act, 1980 (in short the 'KMC Act'), seeking him and other few tenants to show cause as to why the building situated at 80 Bentinck Street shall not be declared to be a condemned or dangerous building for the purpose of Section 412A of the Kolkata Municipal Corporation Act. Being driven by agony due to collapse of a portion of the building at premises nos. 80 and 81, Bentinck Street, the petitioner and four other tenants of the said buildings wrote letter dated July 5, 2019, to the respondent no. 7/ co-owner of the said buildings, requesting for repair thereof. Copy of this letter was also sent to the respondent/ Kolkata Municipal Corporation. A letter dated July 06, 2019 was issued thereafter, by the respondent. no. 7/ the co-owner and the added respondent. no. 8/ M/s Bidya Construction to the tenants of premises nos. 80 Bentinck Street and No. 1A Grant Lane, including the petitioner. There, they had refuted to carry on any repair works as requested earlier by the petitioner

and other tenants. The said respondents, in the said letter have mentioned an order of this Court dated September 03, 2018 in W.P.A. No. 425 of 2018 and stated therein that the municipal authorities shall take steps for demolition of the said building in terms of the said order of the Court.

4. Hearing took place on July 31, 2019, before the respondent No. 3/ Municipal Commissioner (G & D), Kolkata Municipal Corporation, as per notice dated April 22, 2019. The writ petitioner, along with the other authorised representative of the tenants/occupiers attended the same. The landlords were also represented. The authority has passed an order dated September 26, 2019, under section 412A of the Kolkata Municipal Corporation Act. According to the writ petitioner, in terms of the said order dated September 26, 2019, he was to be given rehabilitation before demolition of the existing building within the timeframe stipulated therein. His grievance is that in spite of the said order being issued by the respondent authority, no steps in terms thereof have ever been taken by the respondent/landlords. To ventilate his grievance as above, he has written letters dated December 03, 2019 and January 22, 2020 to the respondent/Kolkata Municipal Corporation.
5. Before that and at the request of respondent no. 7/ co-owner along with the added respondent no. 8, a meeting was held on January 08, 2020, between the landlords, tenants and the said added respondent no. 8. The petitioner has stated that the meeting has ended into no effective and fruitful result. The petitioner's further grievance is that the owners of the said premises Nos. 80 & 81

Bentinck Street has never been inclined to comply with the order dated September 26, 2019. Also that, the respondent authorities have failed to take appropriate steps against the owners of the premises Nos. 80 and 81 Bentinck Street in furtherance of the order dated September 26, 2019.

- 6.** Seeking redress of such grievance, the petitioner had filed his earlier writ petition before this Court being W.P.A. No. 5511 of 2020. This Court, vide order dated June 17, 2020 directed for consideration of the petitioner's grievance by the respondent/ Kolkata Municipal Corporation. Hence, after consideration, the Executive Engineer (Civil) has issued directions vide his order dated July 17, 2020. The petitioner has stated that the Executive Engineer (Civil), vide his order as above, has granted the owners a time of 2 months for submission of plan. The petitioner says that, in this way, all the directions given earlier, vide the order dated September 26, 2019, were kept intact and were never varied or modified in any manner whatsoever.
- 7.** The following writ petition No. WPA 6934 of 2020 was filed by the respondent No. 7. Vide an order dated January 19, 2021, the same was disposed of by the Court, with the directions that the respondent No. 7 should file a scheme for rehabilitation, before the Kolkata Municipal Corporation. The Kolkata Municipal Corporation should finally settle the same, though only after affording opportunity of hearing to the respondent No. 7 (petitioner in the said writ petition) and all other necessary parties. Also that, the decision of Kolkata Municipal Corporation should be duly communicated. The Court has further held that in case the owner/ respondent No.

7 (the writ petitioner therein) did not submit a rehabilitation scheme within the stipulated time, then Kolkata Municipal Corporation would be at liberty to take steps in respect of the said premises, in accordance with law.

8. According to the writ petitioner, what has happened since thereafter is only an eyewash and the purported pseudo showcasing as if the respondent authority as well as the respondent No. 7 do really proceed to comply with the Court's order by submission of a rehabilitation scheme. Instead, allegedly what submitted was not at all a scheme for rehabilitation, in terms of the Court's direction. The said document only contemplated discrepancies only to dislodge any authenticity and credence thereof. More so, that the representatives of the respondent No. 7, by this way have made an endeavour for extending the time limit, within which they were obliged to perform, in terms of the order of this Court.
9. Due to the alleged non-compliance of the order of the Court dated January 19, 2021 in WPA No. 6934 of 2020, a contempt application being CPAN No. 287 of 2021 was filed. The petitioner has stated in the instant writ petition that during pendency of the said contempt proceeding, the respondent No. 4/Director General (Buildings), Kolkata Municipal Corporation, issued a notice of hearing dated July 22, 2021 which was subsequently withdrawn by the said office after a letter of protest, the same being filed by the present petitioner another notice dated July 28, 2021 was issued by the said respondent No. 4 stating that, no further hearing is necessary as a comprehensive hearing has already taken place back on March 04, 2021.

- 10.** According to the petitioner, however, the stand of the respondent authority in the contempt proceeding was a complete contradiction from what has been stated in their notice dated July 28, 2021. Since the respondents submitted before the contempt Court that a hearing of the parties was necessary, the Court concluded the proceeding by directing the respondent/Kolkata Municipal Corporation to proceed with the hearing and conclude it with a reasoned order (that is, vide Court's order dated July 29, 2021).
- 11.** The petitioner says that, during the hearing in terms of the Court's order as above, the following facts emerged:-
- None of the documents which ought to have been the integral part of a scheme within the meaning of order dated September 26, 2019 was submitted by the respondent No. 7/developer.
 - The purported scheme was bereft of any financial plan for the purpose of carrying out the rehabilitation programme of the occupants of premises nos. 80 and 81, Bentinck Street.
 - Not only the respondent No. 7/the developer blatantly flouted the Court's order by not submitting a scheme but only certain documents, but also the same has colluded with the Kolkata Municipal Corporation Authority to fulfill an ulterior motive to develop for their commercial interests the premises nos. 80 and 81, Bentinck Street along with the adjoining premises being 1A, Grant Lane, Kolkata.

- The premises situated at 1A, Grant Lane is not a building in ruinous condition within the meaning of Section 411 of the Kolkata Municipal Corporation Act, 1980.

12. According to the petitioner, clubbing of the premises (in this case that situated at 1A, Grant Lane) for the purpose of formulation of any Scheme in a proceeding under Section 412 A of the Act of 1980 is only illegal. The petitioner put forth his objection in the following manner, before the Authority:-

“a. Premises no. 1A, Grant Lane, Kolkata – 700012 is not a building in a dangerous condition within the meaning of Section 411 of the Kolkata Municipal Corporation Act, 1980;

b. The said Premises no. 1A, Grant Lane, Kolkata – 700012 has over 100 tenants and this fact itself will put the reconstruction of premises no. 80 and 81, Bentinck Street, Kolkata – 700001, which is in occupation of only about 15 tenants, in jeopardy;

c. No notice under Section 411 of the Kolkata Municipal Corporation Act, 1980 to any of the occupants of premises no. 1A, Grant Lane, Kolkata – 700012 had been given by the Kolkata Municipal Corporation and hence there is every chance the purported Scheme is irregular;

d. The petitioner is interested to be rehabilitated as early as possible since due to the ruinous condition of the said premises it possesses threat and danger to his life and property as well.”

13. In response to request of the respondent No. 4 dated August 27, 2021, inviting suggestions, the petitioner has submitted his suggestions as follows:-

“a. The Kolkata Municipal Corporation must proceed in terms of Section 412A(v) of the Kolkata Municipal Corporation Act, 1980 taking into account the fact that the respondent no.7 is disinclined to carry out the directions of the respondent no.3 contained in the order dated 26th September, 2019 and the subsequent orders of the Hon'ble Court,

which the respondent no. 7 had categorically admitted in paragraph 3 of W.P.A. No. 6934 of 2020;

b. The Kolkata Municipal Corporation shall appoint a fit and suitable N.G.O. for rehabilitating the tenants, demolishing and reconstructing premises no. 80 and 81, Bentinck Street, Kolkata - 700001 in terms of order dated 26th September, 2019 passed by the respondent no.3;

c. The Kolkata Municipal Corporation shall direct the said N.G.O. to submit a Plan Proposal in terms of order dated 26th September, 2019 passed by the respondent no.3;

d. The said N.G.O. be directed to measure and prepare a plan containing the area in occupation by the tenants of 80 & 81, Bentinck Street, Kolkata - 700001, upon consultation with the Inspection Book of the Kolkata Municipal Corporation;

e. The Kolkata Municipal Corporation must debar the respondent no.7 and/or their men and agents from participating in the implementation of the order dated 26th September, 2019 passed by the respondent no.3 insofar as the same relates to rehabilitation of the tenants and demolition and reconstruction of the premises no. 80 and 81, Bentinck Street, Kolkata - 700001 in any manner whatsoever;

f. Further the Kolkata Municipal Corporation shall repossess premises no. 80 and 81, Bentinck Street, Kolkata - 700001 and handover the same to the said N.G.O. upon being satisfied with the scheme for demolishing and reconstructing premises no. 80 and 81, Bentinck Street, Kolkata - 700001 in terms of order dated 26th September, 2019 passed by the respondent no.3;

g. Thereafter tripartite agreements be executed by the Kolkata Municipal Corporation and the concerned N.G.O. with each of the tenants."

- 14.** Hearing has taken place on August 27, 2021 and site inspection was also done. Ultimately, the respondent No. 4/Director General (Building), Building Department, Kolkata Municipal Corporation

has passed an order dated October 9, 2021, directing inter alia therein as follows :-

“Under the above circumstances, Section 412A of the KMC Act, 1980 has to be implemented as early as possible. All the stake holders have to execute their role as expeditiously as possible to implement Section 412A of the KMC Act, 1980.

The owner of the building is directed to submit plan in terms of Section 412A of the KMC Act, 1980 within 15 days after Puja vacation, showing the tenants' rehabilitation along with following NOCs required as per law:

(i) NOC from Chief Valuer & Surveyor's Department, KMC.

(ii) NOC of Property Tax from KMC.

(iii) Mutation & Amalgamation Certificate from Assessment & Collection Department, KMC.

(iv) NOC from competent authority of Archeological Survey of India.

(v) NOC from competent authority of West Bengal Fire & Emergency Services.

(vi) NOC from competent authority of Urban Land Ceiling Department.

(vii) Soil Observation Report from Geo-Technical Engineer, KMC.

(viii) NOC from BSNL for Micro-wave.

(ix) Structural Calculation & Structural Stability Certificate from Empanelled Structural Engineer, KMC.

As the site may be affected within Zone of Consideration under Regulation described by the Archeological Survey of India for Currency Building in its vicinity, the applicant shall have to apply before the Archeological Survey of India for obtaining NOC.

Executive Engineer (C)/Bldg./Br-VI will measure the area under possession of Sri Arindam Ghosh, if there is any dispute in regard to the area occupied by the tenant.

The applicant will apply before Assessment-Collection Department, KMC for amalgamation of 2 (two) plots within 7 (seven) days after Puja vacation.

Assessor Collector (North) is requested to process for amalgamation and help KMC to determine the actual number of tenants within premises no. 80/81, Bentinck Street and premises no. 1A, Grant Lane.

The Executive Engineer (C)/Bldg/Br-VI is directed to process the KMC plan case on submission of the proposal u/s 412A of the KMC Act, 1980 within 15 (fifteen) days after submission of the proposal.

Application has to be made by the owner within 7 (seven) days after Puja vacation."

A corrigendum to incorporate certain amendments/corrections as to the said order dated October 9, 2021 was issued on October 26, 2021.

- 15.** By filing the instant writ petition, the petitioner has therefore prayed for the reliefs inter alia that, the order of the respondent No. 4 dated October 9, 2021 and corrigendum as to the same dated October 26, 2021 be set aside; the respondent Authorities be directed to take immediate steps under Section 412A (v) of the Kolkata Municipal Corporation Act, 1980 with respect to the premises nos. 80 and 81, Bentinck Street and taking into consideration the suggestions put forth by the petitioner as mentioned above; order restraining the respondent Authority from coming into effect or further effect to the purported Scheme, submitted by the respondent No. 7 and to the impugned order and corrigendum and/or to act in terms thereof; order restraining the respondent authority from affecting any amalgamation of premises nos. 80 and 81, Bentinck Street with premises No. 1A, Grant Lane.

- 16.** Mr. Abhratosh Majumdar, learned senior counsel for the writ petitioner has raised vehement objections as to the alleged endeavours said to have been made by the respondent authority as well as the private respondents, allegedly also being in collusion with each other, to amalgamate the premises Nos. 80 and 81 Bentinck Street and No. 1A Grant Lane. He has termed the same to be of gross arbitrariness and blatantly illegal. He says that the provision under section 412A of the Kolkata Municipal Corporation Act, 1980, does not provide for amalgamation of any two or more premises. That the provision for amalgamation has been made under section 178 of the said Act, which contemplates distinct and separate procedure altogether. That, the respondent authority while acting under the provisions of section 412A of the Kolkata Municipal Corporation Act, 1980, is not permitted under the law to venture into the provisions of the other part of the statute. Mr. Majumdar learned senior counsel has submitted that there is no scope or provision made for amalgamation of any two properties, in section 412A of the Kolkata Municipal Corporation Act, 1980. That the respondent authority should strictly be restricted within the provisions under which it has taken up the proceedings that is section 412A of the Kolkata Municipal Corporation Act, 1980. That, in accordance with the law, the respondents are only authorised to deal with the property in dilapidated conditions, in a proceeding under section 412A of the Kolkata Municipal Corporation Act, 1980. According to him, property situated at 1A Grant Lane is not in dilapidated condition at all. He says that the proceedings as initiated by the said respondent authority only relates to the premises Nos. 80 and 81 Bentinck Street, which are actually in a ruinous condition.

- 17.** Mr. Abhratosh Majumdar, learned senior counsel has submitted that the Scheme said to have been submitted by the respondent No.7, before the KMC authority is only an eyewash and farce. That, in the said Scheme, the aspect of rehabilitation of the existing tenants, including the present petitioner has not been taken care of as was directed by the office of the respondent itself, in its order dated September 26, 2019. That, the said Scheme does not also comply with the orders of this Court. That, the document is only incomplete in so far as the same has not incorporated any financial plan of rehabilitation of the existing tenants. He says in fact the order of the Court has never been acted upon by the respondent authority, as yet.
- 18.** According to Mr. Majumdar, the order passed by the Special Municipal Commissioner (G. D & S), Kolkata Municipal Corporation has now reached its finality, the same being accepted by the parties concerned without any challenge being made as to the same. Mr. Majumdar submits that the said order has two parts; that the owner of the premises is to give proper rehabilitation to all the tenant/occupiers of premises nos. 80 and 81 Bentinck Street before demolition of the existing building; and also to provide equivalent floor area to all the tenants/occupiers after construction of new building at premises nos. 80 and 81, Bentinck Street. Therefore, it is submitted, that the scheme of rehabilitation is the precondition before the existing building can be demolished by the owner. Also that, after construction of the new building being complete, the tenants/occupiers are to get equivalent floor area as they have been occupying in the present

dilapidated building, in the said newly constructed structure. He says that, the said order of the Special Municipal Commissioner has never contemplated any amalgamation plan. Rather the same has only propounded the rehabilitation scheme as the precondition before the existing building can be demolished. By this way, it is submitted that the interests of the tenants/occupiers were protected by the respondent though, later on, the same respondent has violated its own order by not insisting for the proper rehabilitation scheme in terms of its earlier order dated September 26, 2019.

19. Mr. Abhratosh Majumdar, learned Senior counsel says that the impugned order dated October 9, 2021 is not an order in review by the respondent of its earlier order dated September 26, 2019 and it cannot be in accordance with the law. He says that the respondent No. 4 is not likely authorized and entitled to request to process for amalgamation of the properties as mentioned above, in his order dated October 09, 2021 which he possess in a proceeding under Section 412 A of the Act of 1980. That, the impugned order not only violates the statutory provision but also the order of the respondent itself passed earlier on September 26, 2019.

20. Therefore, Mr. Abhratosh Majumdar, learned Senior counsel has submitted that the impugned order is liable to be set aside being de hors the law. He submits that the petitioner is entitled to be granted relief in terms of respondent's earlier order dated September 26, 2019 and the measures suggested by the petitioner before the respondent authority at the time of hearing (mentioned

above). He seeks that the present writ petition be allowed with an appropriate order in this regard.

21. According to the writ petitioner, the respondent authority has acted in an oblique manner, in violation of the provisions under section 412A(v) of the Act of 1980, by not publishing any Scheme of rehabilitation and reconstruction of the dilapidated property, as yet. Mr. Majumdar, learned senior counsel has relied on a judgment in ***Central Bank of India vs Ravindra & Others*** reported at **(2002) 1 SCC 367**.
22. The respondent/Kolkata Municipal Corporation has challenged the Authority of the writ petitioner to question in any manner whatsoever the scheme for development of the premises after demolition of the old dilapidated structure situated there. The respondent/Kolkata Municipal Corporation says that the petitioner who claims himself to be the tenant of the premises cannot question the Scheme for development thereof, so long as there is no injury to his tenancy rights. According to the said respondent, the petitioner at best, may be interested to be rehabilitated with the same area which he has under his physical possession. Mr. Alok Kumar Ghosh, learned Advocate appearing for the respondent/Kolkata Municipal Corporation has suggested that there is nothing on record to find out or in support of the allegation levelled by the writ petitioner that the respondent authority has no intention to ensure rehabilitation of the writ petitioner as alleged.
23. Mr. Ghosh, learned counsel has further stated that the writ petitioner has misconceived regarding the purport of the provisions

under Section 412A of the Kolkata Municipal Corporation Act, 1980 and the sub-sections thereunder. He says that, Section 412A(v) of the Act of 1980 may only come up for consideration after failure on part of the owner of the premises, to avail the opportunity as contemplated under Section 412A(iii) of the said Act. He says that, the petitioner's prayer for directions to be issued upon the respondent authority to take steps under Section 412A(v) of the Kolkata Municipal Corporation Act, 1980 is therefore, misplaced, misconceived and erroneous.

24. Mr. Alok Kumar Ghosh, learned counsel for the respondent/Kolkata Municipal Corporation has submitted that the petitioner admittedly being a tenant of the concerned premises, may at best seek his right of rehabilitation in the same capacity in the newly constructed building. Accepting the same, the petitioner being admittedly the tenant of the premises, shall have no legal right to raise questions as regards amalgamation of the two premises and/or whether the amalgamation sought for by the owners of the premises is legal or not. According to the respondent/Kolkata Municipal Corporation, the suggested measures put forth by the writ petitioner before the respondent authority at the time of hearing are only baseless, improbable and outcome of gross misconception of the existing law.

25. Mr. Ghosh has further submitted that, at the time of inspection of the premises, the petitioner has restrained the respondent authority and its officials to take measurement of the unit which is under his possession. So far as the other tenants and occupants are concerned, according to Mr. Ghosh, no one has any grievance

as regards the measured area of their respective occupation in the said tenanted property. It is submitted that the writ petitioner has no authority or right to raise grievance with respect to the portions of the other tenants who themselves have not come forward to raise any protest as to the outcome of inspection. He submits that the respondent's action is not contrary to the order of the Special Municipal Commissioner dated September 26, 2019 as alleged but only in furtherance thereof, in order to bring a plausible and feasible development scheme for the dilapidated premises.

- 26.** Mr. Sanjoy Basu, learned advocate has appeared for the respondent No. 7. So far as this respondent is concerned, there is no denial or dispute as to the fact that to execute a development plan by demolishing the old structure over the concerned premises and constructing a new one, the owner/developer would be obliged to provide rehabilitation to the entire number of tenants who has been occupying units in the said old structure. He submits that, there are practical difficulty to construct a full-fledged building at the piece of land where the dilapidated structure is standing at present at 80 and 81, Bentinck Street. That, there may be sanctioned regular alignment of road which may restrict the owner/developer to get adequate area to construct the proposed new building. As such, in order to execute the order of the respondent/Kolkata Municipal Corporation to effectively rehabilitate the tenants in the newly constructed site, it would be necessary to incorporate further land area with the existing piece of land and construct building thereupon. Hence, a prayer for amalgamation of the two premises being Nos. 80 and 81, Bentinck Street and 1A, Grant Lane has been made before the

respondent/Kolkata Municipal Corporation by the owner of the said premises. He submits that the same is only in furtherance of the statutory provision as well as the order of the respondent/Kolkata Municipal Corporation dated September 26, 2019 upon which the writ petitioner has sufficiently emphasized. According to him, the rehabilitation Scheme has been prepared in such a manner that each and every tenant/occupier gets proper rehabilitation with the equivalent floor space as he has been occupying in the old building, after completion of construction of the new building.

27. Mr. Basu has also mentioned about the title suit being T.S. No. 114 of 2019 pending in the Court of Judge, Bench-XI at City Civil Court and an order passed in the same dated July 31, 2023. He submits that the said title suit is by the present writ petitioner seeking relief before the Civil Court. That by dint of the order passed in the same dated July 31, 2023, the prayer of the plaintiff/present writ petitioner, under order 39, Rule 1 and 2, CPC has been rejected by the Court. He has also submitted that the writ petition is devoid of any merit and sought for an order of this Court, dismissing the same.

28. In this case the parties have challenged the authority and the legal rights of their respective opponents. The importance of adherence to statutory procedures and the interpretation of specific provisions related to notices, appeals, and permissible uses of water and property assessments are well established principles. These principles suggest that any scheme or program aimed at rehabilitation must conform to statutory requirements, particularly

those concerning due process, proper notice, and compliance with prescribed procedures.

- 29.** Chapter XXII of the Kolkata Municipal Corporation Act, 1980, envisages the provisions relating to “Buildings”. Apart from the specific provisions as enumerated under “A - Procedure”, relating to the sanction, erection, completion of construction, demolition and appeal, the statute has provided “B - General Powers”, relating to the “Buildings”.
- 30.** One of such general powers with relation to buildings is enumerated under section 411 of the said Act. The same has provided for identification of the buildings in ruinous condition, the owner of the building to be put on notice there for, requiring him to demolish or repair the same. Also, for the object to secure safety of the public or the inmates of the building, if the Municipal Commissioner thinks so fit, can by order demolish, repair, or secure, or cause to be demolished, repaired, or secured, a dilapidated or ruinous as per the report of the Chief Municipal Architect and Town Planner. Likewise, power of the Corporation to declare building or any part thereof condemned and to order demolition of such building has been provided under section 412A of the said Act.
- 31.** In case the Municipal Commissioner finds demolition of a dangerous building as per provision under Section 411 of the Act will cause hardship to the persons in occupation of the building or that the demolition would not be a conducive resolution in a hugely populated area where there is acute shortage of accommodation it is empowered to take resort under the provisions of Section 412A of

the said Act. The same has provide for declaration of a dilapidated building as a “condemned building” for demolition of the same and/or demolition and reconstruction of the same for public interest. Let the provision be quoted as follows:-

“412A. Power to declare building or any part thereof condemned and to order demolition of such building. — Notwithstanding anything contrary contained in this Act, or in any other law for the time being in force or in any agreement, custom or usage or in any decree, judgement, decision or award of any court, tribunal or authority, where it appears to the Municipal Commissioner that demolition of a dangerous building under section 411 will cause hardship to the persons in occupation of such building and may not be conducive to public interest in the urban area suffering from acute shortage of accommodation, it will be open to the Municipal Commissioner to proceed in the manner, and take the steps, as set out, hereunder:—

(i) issue a notice to the owner and also occupier recorded as such in the records of the Corporation calling upon them to show cause, within such period as may be prescribed, why the building in question or any portion thereof shall not be declared to be condemned for the purpose of this section and after hearing the causes shown within the said period or such further period as may be granted, if it is found necessary in public interest to declare the building or any portion thereof condemned and should be demolished immediately for public safety, the declaration may be made to that effect requiring the building or the specified portion thereof to be demolished;

(ii) a copy of the declaration under clause (i) shall be served upon the owner and occupants who are recorded in the records of the Corporation as also pasted on the outdoor of the building requiring the owner and the occupants to vacate the premises within a month from the date of service and pasting of such declaration or within such extended period as may be granted;

(iii) simultaneously with the making of the declaration under clause (ii), the Corporation will serve a notice upon the owner or owners, as the case may be, and paste it on the outdoor of the building providing an option to the owner or owners, as the case may be, of the building to reconstruct the building according to the plan to be sanctioned by the Corporation with such expedition as possible and providing for maximum floor area necessary for accommodating the erstwhile occupier or occupiers, as the case may be, and additional floors as

may be required for recovery of the expenses for construction after relaxation of the applicable building rules. In the event, the owner or owners, as the case may be, so agreeing and applying, the Corporation shall allow a building plan submitted for the purpose to be sanctioned with additional floors and floor areas so as to provide for the recovery of the expenses to be incurred;

(iv) in the event of disagreement or disinclination on the part of owner or owners, as the case may be, to avail of the opportunity contemplated under clause (iii), the owner or owners, as the case may be, keeping the building in dilapidated condition which may likely cause the environment pollution, fire hazards, unsafe to public safety, health hazards, nuisance etc. shall be subject to such action as provided in the law for the time being in force;

(v) subject to the provisions of this section, the Corporation may cause development work in respect of the dilapidated building in such transparent manner, and on such conditions, as may be prescribed by Scheme, by the Corporation."

- 32.** Declaration of the building as a condemned building, demolition thereof and reconstruction thereupon are the issues, which also involved in the instant writ petition. According to Section 412A (iii) of the Kolkata Municipal Corporation Act, 1980 the owner of the building as the option to reconstruct the building in accordance with a new sanction plan approved by the Corporation. The owner of the building, if chooses to reconstruct the building is required to provide maximum floor area in the newly constructed building is necessary for accommodating the existing occupiers. According to Section 412A (iii) of the Kolkata Municipal Corporation Act, 1980, the owner is also authorized to construct additional floors as may be required for recovery of the expenses for construction after relaxation of the applicable building rules. In the present case, the owner/developer is agreeable to reconstruct the dilapidated and condemned building situated at 80 and 81, Bentinck Street after providing accommodation to the existing tenants/occupiers in

accordance with their present area occupation. In an event, when the owner would be agreeable to allow commensurate floor area to the existing occupiers in the newly constructed building the Corporation shall sanction the building plan with whatever variation from the existing building Rules with regard to the additional floors and floor areas, so as to provide for the recovery of the expenses to be incurred, is the provision made under Section 412A (iii) of the said Act, 1980.

- 33.** Sub-section IV of Section 412A has provided measures in the event of disagreement by the owner to avail the opportunity contemplated under Section 412A (iii) of the Kolkata Municipal Corporation Act, 1980 as discussed above. The same would not be very relevant for the purpose of this case.
- 34.** The other provision as has been sufficiently relied on by the petitioner is that under Section 412A (v) of the Kolkata Municipal Corporation Act, 1980. It provides that subject to the provisions of the Section, the Corporation may cause develop work in respect of the dilapidated building in a transparent manner. For this provision has been made to purport a scheme containing conditions therein.
- 35.** The order of the Special Municipal Commissioner (G. D & S) dated September 26, 2019 is that passed under Section 412A of the Kolkata Municipal Corporation Act, 1980 with respect to premises Nos. 80 & 81, Bentinck Street. The order inter alia is as follows:-

"ORDERED

Considering the facts and circumstances as stated above, I am of the opinion that the existing building is declared as a condemned building as

per report of building department taking into account the safety of the inmates and public in general.

The Owner of the captioned premises is directed to give proper rehabilitation to all the tenants / occupiers of Premises No. 80/81, Bentinck Street, Ward No. 46, Borough-VI before demolition of the existing building and to provide equivalent floor area to all the tenants / occupiers after construction of new building at Premises No. 80/81, Bentinck Street, Ward-46, Borough-VI.

The existing building is to be demolished by the owner of the Premises No. 80/81, Bentinck Street, Ward-46, Borough-VI at his own cost and risk under the supervision of an Empanelled Structural Engineer of KMC to avoid any accidental hazards. During demolition all precautionary measures are to be taken by the owner of the said premises to avoid any accidental hazards to the neighbouring premises and public in general.

The owner is directed to submit plan proposal through Architect / Licensed Building Surveyor (LBS) and Structural Engineer empanelled with Kolkata Municipal Corporation (KMC) to obtain the sanctioned building plan from the KMC complying with prevailing Building Rules & Regulations of KMC within 4(four) months from the date of receiving of this order. The owner is also directed to finish the constructional works within 36(thirty six) months from the date of receiving of the sanctioned plan to give possession to all the tenants / occupiers of the said premises.

Failing of any of the above conditions, the authority of KMC will take appropriate steps against the owner of the said premises for the purpose of safety and security of the tenants / occupiers of Premises No. 80/81, Bentinck Street, Ward-46, Borough-VI.

With the above order the matter stands disposed off. Let this order be served upon all the parties."

- 36.** The writ petitioner's case is principally founded on the directions made by the Authority vide the said order dated September 26, 2019. The writ petitioner as alleged firstly, that there is not scheme for rehabilitation at all purport by the owner/developer. Secondly, that in the name of a purported scheme, the owner/developer/respondents have submitted only certain documents and no proposal for rehabilitation of the existing tenants including the writ petitioner. It has been submitted that the same is in the stark violation of the order

of the authority itself dated September 26, 2019 passed in a proceeding under Section 412A of the Act of 1980.

- 37.** The writ petitioner's challenge as to the impugned order dated October 9, 2021 of the respondent No. 4/Director General (Building) is founded on the ground that prayer of the owner/developer/respondents to amalgamate another property which is not a "dangerous building" in accordance with law is only illegal being extraneous of the provisions of Section 412A of the said Act.
- 38.** Per contra, it is the case of the respondent Authority as well as the private respondents that rehabilitation scheme is dependent on practicability and feasibility of the resolution brought into the scheme as to how the adequate floor area can be provided to the existing occupants by reconstruction of the building. According to them, due to the sanctioned road alignment adequate space would not be recoverable to provide commensurate floor area to each of the occupants occupying in the building Nos. 80 and 81, Bentinck Street. Therefore, it is only necessary and feasible for the interest of the tenants and occupiers to accumulate more floor area space so that each of them who are now in occupation in the said building can be reallocated to the newly constructed building for the purpose amalgamation of the adjacent property owned by the same landlord would be necessary which is premises No. 1A, Grant Lane.
- 39.** From the provision as enumerated under Section 412A of the Kolkata Municipal Corporation Act, 1980, the Court finds that the law makers have kept in mind the interest of the occupiers of the "dangerous building" as paramount. It has been provided that after demolition of

the dangerous building and construction of a new one each and every tenant/occupier of the old building is to be provided with commensurate and equivalent floor area space as they have been occupying in the dilapidated old building. This consideration was paramount for which the law makers have even gone to the far to make provision for relaxation of the existing building Rules for construction an additional floors in the new building or floor areas.

- 40.** Therefore, the Court finds that for the purpose of Section 412A of the Kolkata Municipal Corporation Act, 1980 and in the context thereof more weightage has been given as to the practicability and feasibility of the rehabilitation scheme and providing commensurate floor space to the existing occupants than in strict compliance of the statutory stipulations made for the purpose.
- 41.** Relaxation of the Building Rules is the contemplation under the law in order to ensure the adequate floor area space to be allocated amongst the existing tenants. Section 412A of the said Act is an effective mechanism to address dilapidated buildings. The law has secured interests of the existing tenants/occupiers, even by relaxing the provisions of applicable Rules. Securing interests of the existing tenants/occupiers is paramount, so that they can be provided with the floor space, which they have been so far occupying. Amalgamation of two buildings for the purpose of a rehabilitation Scheme in the context of section 412A of the Kolkata Municipal Corporation Act, 1980, is not prohibited under the said provision. The said provision of law speaks about building plans, tenant accommodation, demolition order and also in regard to the relaxation of the existing Rules, if need be so. The writ petitioner has put forth his argument in such a manner as to be

understood that amalgamation of two buildings are prohibited in a proceeding under section 412A of the Kolkata Municipal Corporation Act, 1980. At the cost of reiteration, this Court mentions that section 412A of the said Act is not a prohibitory but an enabling provision, keeping in mind the highest and paramount goal of welfare of the existing tenants/occupiers of a dangerous and condemned building. The said provision of law is only to take forward the goal of public interests to be served in a proper manner. Legality of actions and the rights of tenants are to be considered within the framework of the ongoing legal process, which has not put any embargo as to any plan or scheme, which is practicable, feasible and serves the interests and purpose of the existing tenant/occupiers of a dangerous and condemned building, in a transparent manner. The primary concern therefore is whether the actions suggested to be taken as part of the rehabilitation plan — such as demolition and sanction of a building plan — are in accordance with the law and the Court's directions.

- 42.** An amalgamation process is not something alien to the law which governs the parties in this case. The Kolkata Municipal Corporation Act, 1980, has specifically provided for amalgamation of the lands or buildings [as per section 178 (4) of the Kolkata Municipal Corporation Act, 1980]. The Court finds that since in a rehabilitation scheme, the interest of the existing tenant/occupiers is paramount so that they may be provided with commensurate floor area as they have been occupying so far and section 412A of the said Act has not specifically prohibited amalgamation of buildings in order to come up with a practicable and feasible Scheme for rehabilitation, rather has provided for relaxation of strict provisions under the Rules, if required. Therefore, there would not be any illegality and impropriety as alleged,

if for the sake of securing more floor area, amalgamation of the properties is proposed in a plan/Scheme for rehabilitation under section 412A of the Kolkata Municipal Corporation Act, 1980, in so far as procedural compliance as regards the same are maintained in a transparent manner. If the petitioner's grievance would have been of being left out of the building plan or other procedural issues, which is however, not a specific challenge in the instant writ petition, the remedy should have been before the appropriate forum and this Court while exercising power of judicial review, would not be proper to entertain such a question, had it been in issue.

- 43.** Amalgamation of properties in a Scheme for rehabilitation is structural or planning aspect of the Scheme, which basically is not in focus, in the context of section 412A of the Kolkata Municipal Corporation Act, 1980. The said provision of law emphasizes on tenant protection, building plan approval, and procedural compliance in a transparent manner by the owner or the Corporation itself. Record has revealed in this case that on each step, the petitioner has been afforded opportunity of hearing and also to express his opinion and suggestions. The owner/developer of the property has never denied its responsibility to provide rehabilitation to the tenant/occupiers before the dangerous building is demolished. For the said purpose, inspection of the premises has also been held to ascertain the specific portions occupied there in by each of the tenant/occupier. In fact, there is allegation of non-cooperation by the petitioner in the process of inspection and ascertainment of the floor area under his possession.
- 44.** The order of the Special Municipal Commissioner dated September 26, 2019 has been specifically emphasized as having reached its finality

and being unavoidably binding on the parties. The matter, however, admittedly did not end there and at the instance of both the parties, this Court has intervened in different writ petitions filed by the respective adversaries. By virtue of the Court's order, further hearing was afforded to the parties. To the tune and in consonance with the provisions of section 412A of the Act of 1980, measures have been taken to bring out a workable solution by encompassing greater area, to adequately provide to the tenants and occupants of the endangered building. On a careful perusal of the impugned order dated October 9, 2021, it appears that the respondent No.4 has insisted for a due procedure to be followed for amalgamation of the two properties by directing the owner/developer to apply for amalgamation of the properties before the competent authorities. This further reinforces the Court's conclusions already mentioned, concerning the legitimacy and appropriateness of the order dated October 9, 2021, which is under challenge in this writ petition.

45. Hence the grounds of challenge as against the said impugned order dated October 9, 2021, appear not to be cogent, sufficient and maintainable. On the other hand, the said impugned order appears to be just, fair, proper and lawful being not in violation of the statutory provisions. Hence, there is no scope for interference as to the same by this Court and the present writ petition is liable to be dismissed.
46. For the reasons as discussed above, the writ petition No. **W.P.O. 1311 of 2021**, is dismissed.
47. Urgent certified copy of this judgment, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(Rai Chattopadhyay, J.)