

OD-7

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
ORIGINAL SIDE

WPO(P)/1/2024

SK. MAHBUB HOSSAIN
Vs
THE STATE OF WEST BENGAL AND ORS.

BEFORE:
THE HON'BLE THE CHIEF JUSTICE T.S. SIVAGNANAM
And
THE HON'BLE JUSTICE HIRANMAY BHATTACHARYYA

Date : 3rd May, 2024.

Appearance:

Mr. Ratul Das, Adv.
Ms. Anjushri Mukherjee, Adv.
...for the petitioner

Mr. Alak Kr. Ghosh, Adv.
Mr. Arijit Dey, Adv.
...for KMC

Sk. Md. Galib, Adv.
Mr. Abu Siddique Mallik, Adv.
...for Board of Auqaf Board

Mr. Somnath Bose, Adv.
...for CESC Ltd.

The Court: Pursuant to the directions issued earlier, the Kolkata Municipal Corporation has filed a report property-wise.

On perusal of the report, we find that the common feature in respect of all the buildings are that they are totally unauthorised. There is no approved building plan and steps for demolition of the building have been taken by the

Kolkata Municipal Corporation (KMC). The reason for not being able to proceed with the demolition is on account of the fact that most of the buildings are fully occupied. The occupants are stated to be unauthorised occupants with no document in support of their claim.

Since on an earlier occasion an allegation was made that the description of the property was not properly given by the writ petitioner, the Court directed the demolition drive to be kept on hold. Now, on perusal of the elaborate report filed by KMC, it is evident that all the buildings are totally unauthorised. In respect of buildings where demolition was partially carried out, KMC would state that the occupants once again reconstructed the same. If this has happened, the same needs to be condemned as the occupants of the building who are stated to be illegal occupants cannot take law into their hands.

For the purpose of vacating the occupants of the building, a Special Task Force has to be constituted by the Kolkata Police. Otherwise, the authorities of KMC would not be able to carry out their statutory duties and effectively demolish the unauthorised structures. Therefore, we direct the Commissioner of Police to issue appropriate orders for constituting a Task Force to assist the KMC in carrying out the orders of demolition which have already been passed. The occupants shall be given time to vacate the premises which shall be not later than 15th June, 2024 and if they fail to vacate, the police authorities are empowered to use reasonable force so as to remove the unauthorised occupants from the buildings. Thereafter, the demolition program already initiated by KMC shall commence from 17th June, 2024 and take into a logical

end. The Special Task Force shall also provide adequate protection to the officers of KMC while carrying out the demolition drive.

If this order is violated, the police authorities are at liberty to register criminal cases against such of those persons who defy the Court's order.

In respect of one of the properties, namely, 18/H/6, Girish Vidyarthi Lane, Ward No. 038, Borough-IV, the report submitted by KMC would state on inspection it is found that there is no such property.

It is to be noted that the door number of the property was permitted to be amended by order dated 4th March, 2024 which appears to have not been brought to the notice of KMC. Therefore, the KMC is directed to inspect the property in No.18/H/16 Girish Vidyarthi Lane, Ward No. 038, Borough-IV and upon inspection, they shall take appropriate steps as already taken in respect of the other properties and the other directions issued will equally apply to this property as well.

The learned Advocate for the KMC would submit that when an action is taken for eviction of the unauthorised occupants or demolition, collusive suits are filed before the civil court and an order of status quo or injunction is obtained and the KMC is shown as a proforma party. Under the provisions of the KMC Act, there is a bar of jurisdiction of the civil court in respect of action initiated by KMC in exercise of the powers under the Act. Therefore, no civil court shall entertain any suit with regard to the action initiated by KMC in respect of the properties covered in this writ petition, more particularly, when this Court is in seisin of the matter and it is monitoring the progress. In the

event any civil court passes any order, the KMC is at liberty to bring the same to the notice of this Court for appropriate directions.

The report submitted by the Auqaf Board and the Enemy Property authority is also taken on record.

Further report can be filed by the Auqaf Board, if necessary.

List the matter on 5th July, 2024 to enable the Court to monitor the progress of the matter.

(T.S. SIVAGNANAM, C.J.)

(HIRANMAY BHATTACHARYYA, J.)