

ORDER SHEET
IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
ORIGINAL SIDE

WPO/1944/2022
WITH WPA/1811/2022
CAN/1/2022 WITH
WPA/834/2022, WPA/835/2022, WPA/838/2022

NIBEDITA SAHA PROPRIETOR OF SHREE SHANKAR PAPER AND BOARD
HOUSE
-VS-
KOLKATA MUNICIPAL CORPORATION AND ORS.

BEFORE:
The Hon'ble JUSTICE PARTHA SARATHI SEN
Date : 6th February, 2025.

Appearance:

Mr. Arindam Banerjee, Adv.

Mrs. Arpita Saha, Adv.

Ms. Kriti Kestri, Adv.

... for the petitioner in

WPO/1944/2022, WPA/834/2022,

WPA/835/2022 and WPA/838/2022

...and for the respondent nos.

5,6,7,9 & 10 in WPA/1811/2022.

Mr. Tanmoy Mukherjee, Adv.

Mr. Biswarup Biswas, Adv.

...for the petitioner in

WPA/1811/2022.

...for the respondent nos. 6, 7 &

8 in WPO/1944/2022.

Mr. Gopal Chandra Das, Adv.

...for KMC in WPA/1811/2022

Mr. Alak Kr. Ghosh, Adv.

Mr. Debjit Mukherjee, Adv.

Ms. Manisha Nath, Adv.

...for KMC in WPO/1944/2022,

WPA/834/2022, WPA/835/2022,

WPA/838/2022.

The Court :- Smt. Nibedita Saha (hereinafter referred to as 'Nibedita' in short) who is the writ petitioner in WPO No. 1944 of 2022, WPA No. 835 of 2022, WPA No. 834 of 2022 and also in WPA No. 838 of 2022 as the proprietor of one Dolphin Papers & Board Associate is represented by her learned Advocate.

1. The Kolkata Municipal Corporation (hereinafter referred to as the “KMC” in short) and its functionaries who are the respondents in all the writ petitions are also represented by their counsel.
2. M/s. Shek Developers and Sk. Sabir Ali who are the private respondents in WPO No. 1944 of 2022, WPA No. 835 of 2022, WPA No. 834 of 2022 and WPA No. 838 of 2022 and the writ petitioners in WPA No. 1811 of 2022 are also represented by their counsel.
3. In WPO No. 1944 of 2022, the subject matter of challenge is a notice dated 15.12.2022 under Section 411 of the KMC Act, 1980 (hereinafter referred to as ‘the said Act of 1980’) as issued by the Executive Engineer (Civil), KMC in respect of Premises No. 26, Budhu Ostagar Lane, Ward No. 37, Borough-V, Kolkata-700009.
4. In WPA No. 834 of 2022, WPA No. 835 of 2022 and WPA No. 838 of 2022, the subject matters of challenge are the Order dated 31.12.2021 as passed by Executive Engineer Civil (BLdg), Borough No.IV & V, KMC as well as a sanctioned building plan issued by KMC authority in respect of the said premises.
5. In WPA No. 1811 of 2022, the subject matter of challenge is a Notice dated 11.01.2022 as issued by the Executive Engineer (Civil), Building Department, Borough- IV and V, KMC in respect of the aforementioned premises.
6. In course of hearing, on behalf of the KMC a server copy of the Order dated 01.02.2023 as passed in WPO No. 567 of 2022 by a Co-ordinate Bench was filed. The same is taken on record.
7. It is submitted that by the said Order dated 01.02.2023, the said Co-ordinate Bench while disposing WPO No. 567 of 2022 has been pleased to set aside the sanctioned plan dated 05.10.2021 as issued by the KMC authority in

respect of the said premises. It is, thus, submitted on behalf of the KMC authorities as well as on behalf of the M/s. Shek Developers and Sk. Sabir Ali that there are nothing to be decided in WPA No. 835 of 2022, WPA No. 834 of 2022, WPA No. 838 of 2022 and WPA No. 1811 of 2022.

8. Per contra, learned Advocate appearing on behalf of Nibedita draws attention of this Court to the server copy of the Order and Judgment dated 07.03.2022 as passed by a Division Bench of this Court in MAT No. 293 of 2022. It is submitted on behalf of Nibedita that while disposing the said MAT No. 293 of 2022, an order of remand was passed for a decision on the prayers (b) and (d) which have been set out in the internal page 2 of the Judgment dated 07.03.2022 as passed in MAT No. 293 of 2022.

9. On perusal of the internal page 2 of the Order and Judgment dated 07.03.2022 as passed in MAT No. 293 of 2022, it appears to this Court that the subject matters as involved in prayers (b) and (d) are with regard to the aforesaid Order dated 31.12.2021.

10. For effective adjudication of the instant five writ petitions, the relevant portions of the Order dated 31-12-2021 are required to be looked into and the same has been quoted hereinbelow in verbatim:-

“However hearing conducted wherein the inmates/tenants of the premises as well as the Developer participated. It was observed that some of the tenants are non cooperative rather raising strong objection against construction of the building as also objection against construction of the building as also objecting against the sanctioned building plan of the KMC whereas some other tenants are actively cooperating with construction of the building.

HOWEVER at this juncture it is hereby opined after considering the submissions of all the participants that KMC has no

*jurisdiction addition to entertain the objection pertaining to some inmates/tenants henceforth they are at liberty to proceed before the appropriate forum for adjudication of their grievances and in the meantime **const action** of the building shall be continued.”*

11. On perusal of the aforementioned portion of the Order dated 31.12.2021, it appears to this Court that while passing the said Order dated 31.12.2021 the Executive Engineer (Civil)/Bldg/Br-IV & V came to a finding that the KMC authority had no jurisdiction to entertain the objection of the inmates and tenants of the said premises and accordingly, the liberty was given to such inmates and tenants to proceed before the appropriate forum for ventilating their grievances and at the same time, liberty was given to M/s. Shek Developers and Sk. Sabir Ali to continue and/or proceed with the construction at the said premises.

12. From the Order dated 01.02.2023 as passed in WPO No. 567 of 2022 by the Co-ordinate Bench of this Court, it reveals that the sanctioned plan dated 05.10.2021 in respect of the said premises has been set aside.

13. Such being the position, this Court is of considered view that nothing remains to be decided in WPA No. 835 of 2022, WPA No. 834 of 2022 and WPA No. 838 of 2022. This Court is of further considered view that nothing is also required to be decided in WPA No. 1811 of 2022 as filed by the M/s. Shek Developers and Sk. Sabir Ali since the said two writ petitioners were aggrieved with the stop order of all construction activities in respect of the said premises. It appears to this Court that since the Co-ordinate Bench by its Order dated 01.02.2023 has quashed the sanctioned plan in respect of the said premises,

WPA No. 1811 of 2022 has also now become infructuous and nothing is to be decided in the said writ petition.

14. Accordingly WPA No. 1811 of 2022, WPA No. 834 of 2022, WPA No. 835 of 2022 and WPA No. 838 of 2022 are, thus, disposed of as infructuous.

15. With the disposal of WPA No. 1811 of 2022, WPA No. 834 of 2022, WPA No. 835 of 2022 and WPA No. 838 of 2022, all pending interim applications in connection with the said four writ petitions are also disposed of.

16. Liberty is given to the writ petitioners in WPA No. 1811 of 2022, WPA No. 834 of 2022, WPA No. 835 of 2022 and WPA No. 838 of 2022 to approach this Court for revival of the aforementioned four writ petitions in the event the Judgment and Order dated 01.02.2023 as passed in WPO No. 567 of 2022 is set aside either by a Division Bench or by any competent Court of Law.

17. It appears to this Court that in WPO No. 1944 of 2022, the subject matter of challenge is a notice dated 15.12.2022 as issued under Section 411(1) of the said Act of 1980.

18. This Court thus considers that the WPO No. 1944 of 2022 is required to be heard. It is reported at the Bar that exchanges of affidavit are complete.

19. Such being the position, let WPO No. 1944 of 2022 be listed on February 12, 2025 under the heading "Hearing" at 12 P.M.

(PARTHA SARATHI SEN, J.)