
(2000) 11 CAL CK 0048

In the Calcutta High Court

Case No : Civil Revisional Jurisdiction A.S.T. 4128 of 2000

Emamuddin and Others

APPELLANT

Vs

Calcutta Municipal Corporation and Others

RESPONDENT

Date of Decision : 22-11-2000

Acts Referred:

Calcutta Municipal Corporation Act, 1980 — Section 396, 403, 411, 411(1), 411(4)

Citation : (2001) 2 CALLT 325

Hon'ble Judges : Dilip Kumar Seth, J

Bench : Single Bench

Advocate : Mr. Tarique Quasimuddin, for the Appellant; Mr. Gour Roy Chowdhury and Mr. Jugal Paul, for the Respondent

Final Decision : Dismissed

Judgement

D.K. Seth, J.—The petitioners had been making representation to the Corporation for demolishing of their building which according to them is in a dangerous condition and may collapse at any moment. The Municipal Authorities had issued a notice u/s 411 of the Calcutta Municipal Corporation Act, 1980 directing the owners to demolish the said building. The petitioners has admitted that a part of the building has since been demolished by the Corporation, but they want the rest of the building may also be demolished. Learned counsel for the petitioners points out from annexure "C" that the Corporation in the Notice had mentioned that in case the petitioners fail to comply with notice u/s 411 in that event, the Corporation will execute the work of demolition. Therefore by means of this petition, the petitioners pray that the Corporation may be directed to demolish the building since the petitioners had failed to comply with the direction as contained in the notice u/s 411.

2. Mr. Gour Roy Chowdhury, learned counsel for the Corporation, on the other hand, contends that if the petitioners seek the building to be demolished by the Corporation, in that event they must deposit the requisite fees as condition precedent for undertaking demolition. That apart, according to him the building

is occupied by various other people who are resisting demolition and they are also claiming certain rights. The occupants of the building, on the other hand, are making certain unauthorised repairs.

3. After hearing the parties, it appears that there may be certain disputes between the landlords and the occupants of the building. It is not proper to keep the Corporation involved in private litigation, if there is any resistance or if there is any repair or construction made by the occupants of the building, it is open to the landlord to take appropriate steps before any competent forum or Civil Court. It is only if the building is found to be vacant then only the Corporation can demolish without entering into any disputes. However, if it is in the opinion of the Corporation that the building is to be demolished, then it is open to the petitioners to keep the building vacant.

4. Learned counsel appearing for the petitioners points out that the entire building is not to be demolished, certain portions are to be demolished. He points out that portions to be demolished are toilets which are not occupied by any occupier and are vacant. If it is so that there is a permission to demolish and when the petitioners want to demolish it, it is open to the petitioners to demolish the same. They cannot say that they will not demolish it, but the Corporation will demolish it. Such a right he cannot enforce through a writ petition when the Corporation does not desire to enter into the same. The Corporation's liability occurs only when it appears to it that the building is in danger and it will endanger the lives of others. If it is in the opinion that it does not come within such dangerous situation, in that event the Corporation is not bound/ obliged to demolish the same. Learned counsel appearing for the petitioners further contends that the petitioners will bear the necessary cost and let the Corporation demolish the building. But the Corporation is neither a contractor nor a demolishing agent. The Corporation's jurisdiction arises only when conditions are fulfilled as provided u/s 411(1).

5. In order to ascertain the situation, it may be necessary to refer to sections 411 & 432 of the Calcutta Municipal Corporation Act. The provisions of the said sections are as follows:

411. "Power to order removal of dangerous buildings.--

(1) If any wall or building, or anything affixed thereto, be deemed by the Municipal Commissioner to be in a ruinous state, or likely to fall, or to be in any way dangerous, he shall forthwith cause a written notice to be served on the owner and to be put on some conspicuous part of the wall or building or served on the occupier, if any, of the building requiring such owner or occupier forthwith to demolish, repair or secure such wall, building or thing, as the case may require.

(2) The Municipal Commissioner may, If it appears to him necessary so to do, cause a proper hoarding or fence or other means of protection to be put up at the expense of the owner of such wall or building or the safety of the public or

the inmates thereof; and may, after giving them such notice as the Municipal Commissioner may think necessary, require the inmates of the building to vacate it.

(3) The provisions of this Act and of any rules or regulations made thereunder relating to buildings shall apply to any work done in pursuance, or in consequence, of a notice issued under sub-section(1).

(4) (a) Notwithstanding anything contained in the foregoing sub-sections, the Municipal Commissioner may, fort with 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 safely 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.

(5) Any action taken by the Municipal Commissioner under sub-section (4) shall, unless the contrary is proved, be deemed to have been taken lawfully and in good faith and with due care and attention."

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 therefore.

(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."

6. The plain reading of the said provision reveals that whenever it deems to the Municipal Commissioner that a wall of a building or anything affixed there to is in a ruinous stage or is likely to fall or is to be in any way dangerous then only the

power under of section 411 can be exercised. Under sub-section(1) the notice has to be put up on some conspicuous part of the wall or building or be served on the owner of the occupier, as the case may be. It may also require, by such notice, the owner or occupier forthwith to demolish, repair or secure the wall or building as the case may require. Under sub-section (2) it can require any of the inmates for public safety to vacate the building. Sub-section(4) provides an emergency power to the Municipal authority to forthwith demolish repair or secure or cause to be demolished, repaired or secured or things affixed thereto along with such notice when the Chief Municipal Architect and Town Planner certifies that it is so necessary for the safety or the public or inmates of the building. In doing so, the Corporation summarily may remove the inmates from such portion as is necessary. The expenses for all these exercise incurred by the Municipality is to be borne by the owner.

7. In the present case, Municipality had demolished a portion of the building but is not demolishing the rest which the petitioner wants to be demolished.

8. Section 411 does not provide anything as to what would happen if despite service of notice under sub-section (1) the owner or occupier does not demolish, repair or secure such wall, building or thing. The only thing it can do while exercising power under sub-section(1) of section 411 it can resort to sub-section (2) by putting up hording or fence etc at the expenses of the owner or may require the inmates of the building to vacate after giving them notice. Nothing is provided if despite such notice under sub-section(2) the inmates do not vacate.

9. The emergency power that has been provided under sub-section (4) is dependent on the report of the Chief Municipal Architect and Town Planner provided the Commissioner thinks it fit to do so. In order to apply sub-section(4) two conditions are to be fulfilled. First that the Chief Municipal Architect and town Planner shall certify that such demolition, repair and securing of the building wall or thing is necessary for the safety of the public or inmates of the building. The second condition is that upon such report the Municipal Commissioner thinks it fit to do so. Only when the conditions contained in clause(a) of sub-section (4) of section 411 is satisfied then the Commissioner may summarily remove the inmates from the building or such portion as he may consider necessary in terms of clause(b) at the expenses of the owner as provided in clause(c). In view of sub-section(5) the Municipal Commissioner's action becomes Immune. But while providing such immunity to the Commissioner, it has provided that such action shall be deemed to have been taken in good faith with due care and attention. Thus in order to exercise sub-section(4) the Commissioner is required to take due care and attention and that he has to act in good faith. Thus the power under sub-section(4) cannot be exercised until and unless such step is taken in good faith and with due care and attention. Thus it can only be exercised on the basis of the report of the Chief Municipal Architect and Town Planner certifying that such action is necessary and upon taking due care and attention and acting in good faith when the Commissioner thinks it fit to do so.

10. The power under sub-section(4) cannot, therefore, be invoked by an interested party only for the mere asking, even if he is prepared to pay the expenses. So long it does not satisfy the conditions as discussed above for exercise of the power under sub-section(4), it is not open to the Municipal authority to exercise the power conferred upon it under sub-section(4).

11. If a particular power has been conferred upon a statutory authority on the satisfaction of certain conditions then it is only upon fulfilment of such conditions such power can be exercised. When statute provides a particular power to be exercised in a particular manner, such power is to be exercised in such manner and in no other. Any infraction would make the authority incompetent and the action illegal, unauthorised and without jurisdiction. In such a situation the Court cannot direct the authority to undertake such an exercise without such condition being fulfilled only because the petitioner wants the Corporation to do so. The colour of money even though shown by the petitioner, the same cannot tinge the statutory provision and the Court cannot be a party to such a proposition which is otherwise not permissible in law and is in contravention of the statute.

12. In the present case, in respect of the portion with regard to which the corporation thought it fit to exercise its power under sub-section(4) having had undertaken such exercise, it is not open to the Court to direct similar action in respect of the portion with regard to which the Corporation did not think it fit to undertake such exercise. Therefore, the- petitioner cannot claim any legal right which he can enforce through writ jurisdiction by compelling the Corporation to exercise its power under sub-section(4) even though the authority is not satisfied that it can do so having regard to the condition provided in clause(a) of sub-section(4) and read with subsection (5).

13. Section 412 does not provide for demolition. It only provides some power to require the inmates to vacate in case the Commissioner is of opinion that a building is in dangerous condition and that too by a written order. In default of compliance of such notice, the Corporation is empowered to remove such person with the aid of police. Section 412 does not help us in the present facts and circumstances of the case. Apart from these provisions there is nothing in the Act to empower the Commissioner to demolish a building since the owner wants to demolish or to require the inmates to vacate the same since the owner wants them to vacate. Since a notice has-been issued under sub-section (1) it is open to the owner to demolish it for which no aid from the Commissioner or the Municipal authority is necessary.

14. Therefore, in the circumstances, it is open to the petitioners either to demolish the portions themselves. If there is any difficulty, they may obtain appropriate order from the appropriate forum viz: Civil Court.

15. With these observations, the writ petition is dismissed, but without any order as to costs.

Let urgent xerox certified copy of this order, if applied for, be given to the learned

Advocates for the parties.

16. Petition dismissed