

ITEM NO.7 Court 2 (Video Conferencing) SECTION XVI

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Miscellaneous Application No. 569/2020 in SLP(C) No. 26038/2018

(Arising out of impugned final judgment and order dated 29-11-2019 in SLP(C) No. No. 26038/2018 passed by the Supreme Court Of India)

BENGAL BONDED WARE HOUSE LIMITED Petitioner(s)

VERSUS

KOLKATA MUNICIPAL CORPORATION & ORS. Respondent(s)

IA No. 21335/2020 - APPROPRIATE ORDERS/DIRECTIONS
IA No. 51713/2021 - EXEMPTION FROM FILING AFFIDAVIT
IA No. 1492/2021 - EXEMPTION FROM FILING AFFIDAVIT

Date : 30-07-2021 This matter was called on for hearing today.

CORAM : HON'BLE MR. JUSTICE ROHINTON FALI NARIMAN
 HON'BLE MR. JUSTICE B.R. GAVAI

For Petitioner(s) Mr. Shyam Divan, Sr. Adv.
 Mr. Rakesh Sinha, Adv.
 Mr. Ajay Choudhury, Adv.
 Ms. Pritha Basu, Adv.
 Mr. Manoj Singh, Adv.
 Ms. Ranjeeta Rohatgi, AOR
 Ms. Samten Doma, Adv.

For Respondent(s) Mr. Suhaan Mukerji, Adv.
 Mr. Avishkar Singhvi, Adv.
 Mr. Vishal Prasad, Adv.
 Mr. Nikhil Parikshith, Adv.
 Mr. Nipul Katyal, Adv.
 M/s. PLR Chambers And Co., AOR

 Mr. Sujoy Mandal, Adv.
 Mr. Satish Vig, Adv.
 Mr. Chanchal Kumar Ganguli, AOR

 Mr. Rana Mukherjee, Sr. Adv.
 Mr. Mangaljit Mukherjee, Adv.
 Mr. Suhrojyoti Dey, Adv.
 Mr. Rameshwar Prasad Goyal, AOR

UPON hearing the counsel the Court made the following

O R D E R

By our order dated 11.02.2021, we had specifically asked the Municipal Commissioner to pass orders under Section 412A of the Kolkata Municipal Corporation Act. A show-cause notice was issued and replied to, and we had indicated that the building is extremely old and dilapidated, and, therefore, it is imperative that the Commissioner pass an order at the earliest. We had also indicated that all the tenants would have to be housed in the meantime. Pursuant to this order, an order was passed on 10.03.2021 by the KMC in which it was stated:

"On a request to the petitioner to submit the shortfall of documents dated 13.02.2021 the petitioner has not submitted the following documents.

(i) The revised plan proposal does not comply with the salient features mentioned in the Environment Clearance of State Level Environment Impact Assessment Authority issued for the case premises dated 16.08.2016.

(ii) No Objection Certificates from 138 (one thirty eight) number of tenants have been submitted instead of 258 (two fifty eight) number of tenants.

Considering the submission made during the time of hearing, the Building Department is directed to process the plan proposal in terms of the Section 412A of the Kolkata Municipal Corporation Act, 1980 and the Kolkata Municipal Corporation Building Rules, 2009 as expeditiously as possible in terms of Law."

In reply to this, the petitioner-owner vide a letter dated 23.03.2021 had indicated that all the tenants have no opposition, and indeed Mr. Rana Mukherjee, learned Senior Advocate appearing for the petitioners in the High Court has asked for time to vacate.

We may only state that the two conditions specified at page 36 are unnecessary given the fact that Condition No.1 is now answered vide a Office Circular dated 30.09.2020 in which it has been stated:

"OFFICE CIRCULAR NO. 06 OF 2020-21

Members of the Municipal Building Committee felt to prepare a guideline for "Tree Cover" in terms of rule 144(2) of the KMC Building Rules, 2009 to avoid ambiguity to propose the tree cover area. After thorough discussion in the MBC meeting dated 26/08/2020 vide item no. 53A/20-21, following guidelines are proposed to be followed during preparation of building plan proposal:

1. Tree cover area should be over the virgin land.
2. No projections like chajja, balcony, projected terrace etc. should be allowed over the tree cover area.
3. Water body area may be considered as Tree Cover area if area of water body is 10% or more of the total land area. However plantation is to be made in the embankment. Swimming pool will not be treated as water body.
4. In case of built-up area 20,000 Sq.M. or more, guideline issued by the STATE LEVEL ENVIRONMENT IMPACT ASSESSMENT AUTHORITY vide notification no. 2495/EN/T-II-1/011/2018 dated 17/12/2019 has to be followed."

Sub-clause (4) of the Circular applies to the facts of the case as a result of which the State Level Environment Impact Assessment Authority vide an order dated 17.12.2019 now only insists on the sanction plan (without first issuing stipulated conditions) for applications to be received from 01.01.2020. Also, in case of project proposals requiring EIA (built-up area by 1,50,000 sqm. and above), the project proponent would initially apply to SEIAA with Concept Plan only and would submit sanctioned building plan later along with prepared EIA report.

This being the case, condition No.1 obviously does not have to be met in the facts of the present case. Insofar as condition No.2 is concerned, Section 412A is a section which indicates that the authorities have the power to order demolition of a building with the consequences that follow under the Section. This being the case, even Condition No. 2 is unnecessary. We may also reiterate our order dated 11.02.2021. Mr. Shyam Divan, learned Senior Advocate appearing on behalf of the applicant, assures us that undertakings have in fact been filed which take care of the tenants interest in the meanwhile.

This being the case, we direct the Municipal Authorities to proceed forthwith under Section 412A and exercise the powers that have been given so far as this building is concerned with utmost despatch.

We may only indicate that whichever tenants remain in this dilapidated structure are given a maximum period of 4 weeks from today to completely vacate the same.

Miscellaneous Application stands disposed of.

(R. NATARAJAN)
ASTT. REGISTRAR-cum-PS

(NISHA TRIPATHI)
BRANCH OFFICER