

29.07.2021
Sl. No. 2
sn

W.P.A. No. 11109 of 2021

Mohammad Arif

Vs.

The Kolkata Municipal Corporation & Ors.

Mr. Tarique Quasimuddin,
Mr. Abbas Ibrahim Khan

...for the Petitioner.

Mr. Debjit Mukherjee,
Mrs. Sabnam De

...for the respondent Nos.1 to 4.

Mr. Sudarshan Halder,
Mr. Kushal Chatterjee

...for the Respondent Nos.7, 8 & 9.

Mr. Aniruddha Chatterjee,
Mrs. Zainab Tahur,
Mr. Asif Sohail Tarafdar

...for the Respondent Nos.6, 10, 11 & 12.

Mr. Debasish Ghosh

...for the State.

The writ petition has been filed challenging a notice dated June 7, 2021 issued by the Assistant Engineer(C), Borough-V, Building Department, Kolkata Municipal Corporation. By the said notice, the petitioner has been asked to stop work in respect of the construction going on in the Premises No.108, B.B. Ganguly Street, Ward 48, Borough-V, Kolkata-700 012.

Mr. Debjit Mukherjee, learned advocate appearing for the Kolkata Municipal Corporation, on the basis of his instructions submits that a stop work notice dated June 7, 2021 was issued by the appropriate authority of the Kolkata

Municipal Corporation, on the complaint lodged by the respondent no.7, to the effect that after the death of his wife Smt. Moniva Samanta, since deceased, no fresh power of attorney had been granted in favour of the petitioner/developer. Accordingly, the Kolkata Municipal Corporation, under the provisions of Rule 4, Sub-Rule 3 of the Kolkata Municipal Corporation (Building) Rules, 2009, requested the petitioner to stop the work.

Mr. Mukherjee further submits that the Kolkata Municipal Corporation does not have any objection in respect of the construction. The only reason for the stop work notice is the objection raised by the respondent no.7.

According to the petitioner, it has been settled by several judicial decisions that in a case of like nature, death of one the several grantors of the power of attorney, shall not automatically terminate the power of attorney granted and the power of attorney shall be binding on the heirs and legal representatives of the deceased.

Mr. Kushal Chatterjee, learned advocate appears on behalf of the respondent nos.7, 8 and 9, who are the heirs and legal representatives of the deceased Moniva Samanta. Mr. Chatterjee submits that he has no quarrel with the proposition of law, but in such cases, the interest of the heirs should be protected as per the contract. He relies on a joint venture

agreement/development agreement and the agreement entered into between the deceased Moniva Samanta and the developer, to demonstrate the extent of the claims of the heirs and legal representatives of the deceased. According to Mr. Chatterjee, the claims include a shop room on the ground floor, half of the area of the second floor and compensation/shifting charges in lieu of rent at the rate of Rs.7000/- per month, payable, till the heirs of late Moniva Samanta are put in possession of the shop room. The agreement further provides that interest was payable in case there was delay in payment of the monthly compensation.

Mr. Aniruddha Chatterjee, learned advocate appears on behalf of the respondent nos.6, 10, 11 and 12, who are the other co-sharers of the property. According to Mr. Chatterjee, no further power of attorney is required to be granted by the heirs of late Moniva Samanta to the developer. The law did not require the same. There was no reason for the respondent nos.7, 8 and 9 to move the Kolkata Municipal Corporation by filing an objection to the construction work. That none of the parties have denied that the rights of the deceased have now vested on her heirs. Reference is made to the agreement showing that the same was binding on the heirs and representatives of the parties.

Having considered the rival contentions of the parties, the records of this case and the agreement, I am of the view that no further power of attorney is required to be granted to the developer by the respondents Nos. 7 to 9. The arrear compensation of Rs.7000/- per month for 32 months amounting to Rs.2,24,000/- is payable to the respondent nos.7, 8 and 9. A cheque of the said amount has been brought by the petitioner and is handed over to the learned advocate on record for the respondent nos.7, 8 and 9 in Court. Receipt of the same shall be granted within the course of this day. The bank details of the respondent No. 7 will be provided by the learned Advocate-on-Record of the respondent No. 7 within July 30, 2021.

The petitioner undertakes before this Court that an additional amount of Rs.25,000/- on account of delayed payment as compensation shall be transferred to the bank account of the respondent no.7 who shall act on behalf of respondent nos.7, 8 and 9 within the course of this week.

It is also made clear that the compensation payable from August 2021 shall be paid till possession of the shop room is handed over to the respondent No. 7. The developer shall make all serious efforts to hand over possession of the shop room to the respondent no.7 within six months from date.

On completion of the building, equal half of the area on the second floor shall be handed over to the respondent no.7 simultaneously when the other half is handed over to Sri Ashis Kumar Dutta who is represented by Mr. Aniruddha Chatterjee.

The respondent no.7 is present in Court. He holds the power of attorney on behalf of the respondent No. 8. Respondent No. 9 is a minor and is represented by his father. All transactions will be with the respondent no.7 who will act on behalf of himself as also on behalf of respondent nos. 8 and 9. The respondent no.7 undertakes before this Court that the civil suit filed before the City Civil Court being Title Suit No. 189 of 2021, shall be withdrawn on the next date, as nothing remains to be decided in the suit. Parties are directed to co-operate each other.

It is made clear that in case of any default in payment or handing over possession, as directed by this Court, the respondent nos. 7 to 9 shall be free to proceed in accordance with law.

The current monthly compensation of Rs.7,000/- shall also be transferred within 10th of the month to the bank account of the respondent no.7 .

The impugned notice dated June 7, 2021 bearing Memo No. BI/012/AE(C)/Bldg/Br IV & V issued by the Assistant

Engineer (C), Borough-V, Building Department, Kolkata
Municipal Corporation is set aside.

The petitioner shall be entitled to construct from this
day, strictly in accordance with the sanction plan .

This writ petition is thus disposed of.

There will be however no order as to costs.

Parties are directed to act on the basis of the server copy
of this order.

(Shampa Sarkar, J.)