

12.07.2021
Ct. No. 19
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WPA 11232 of 2021

Jahana Khatoon & Ors.
Vs.
The Kolkata Municipal Corporation & Ors.
(Via Video Conference)

Mr. Achintya Banerjee
Mr. Amit Gupta
Mr. Anindya Bose
Mr. Diptendu Mondal
..... for the petitioners

Mr. Subhrangsu Panda
Ms. Rima Das
..... for KMC

The petitioners claim to be flat owners in respect of the premises situated at 87/H/1 Narkeldanga North Road, P.S.-Narkeldanga, Kolkata – 700 011. It is the contentions of the petitioners that in exercise of power under Section 400(8) of the Kolkata Municipal Corporation Act, 1980, the officers of the Kolkata Municipal Corporation have attempted to demolish the construction of flats on the said premises. The petitioners are apprehensive that the flats in respect of which they have entered into an agreement to purchase and which they have been occupying are also at a risk of such demolition.

It is submitted by Mr. Banerjee, learned advocate appearing for the petitioners, that the land is a thika land and the land has been developed under the provisions of the West Bengal Thika Tenancy Act. Mr. Banerjee also submits that the Building Regulations governing construction on thika land also allow such construction. Mr. Banerjee further submits that even if there are deviations, the law permits regularization in some cases. Finally Mr. Banerjee urges that demolition cannot be done without proper notice to the occupants.

Mr. Panda, learned advocate appearing for the Kolkata Municipal Corporation, submits that in exercise of emergent powers, the Kolkata Municipal Corporation is within its rights to demolish the unauthorized construction. He submits that the petitioners and also the flat owners may approach the Kolkata Municipal Corporation ventilating their grievances. Their contentions shall be taken care of.

Under such circumstances, as disputed questions of facts are involved, this Court cannot go into the question of title of the petitioners, nature and character of the land and the deviations and violations to the sanctioned plan. It is the Municipal Corporation which is the competent authority to decide the issues raised in the writ petition. Moreover the law provides that emergent powers can be

exercised upon recording subjective satisfaction by the authority.

The petitioners are given liberty to make a formal representation before the Executive Engineer (Civil), Building Department, Borough-III, Kolkata Municipal Corporation, respondent no. 6 herein, within a period of seven days. If such representation is made, then the respondent no. 6 shall act and proceed in accordance with law and dispose of the contentions of the petitioners upon hearing the representative of the petitioners, the developer and any other necessary parties. The Kolkata Municipal Corporation will be at liberty to make an inspection. Copy of the inspection report be served upon the respective parties. Thereafter, the competent authority shall act and proceed in accordance with law on the basis of the inspection report. The decision in this regard shall be taken within a period of eight weeks from receipt of the representation of the petitioners. Till such decision is taken, the Corporation shall stay its hand with regard to any further demolition of the flats occupied by the petitioners as it is an admitted position that the Corporation has not demolished the area occupied by the petitioners as yet. However, if the Corporation is satisfied that the construction is illegal and cannot be allowed to stand in contravention of the statute, then

the Corporation shall be at liberty to proceed in accordance with law upon compliance with the principles of natural justice. This Court has not gone into the merits of the claims and counter-claims of the respective parties. These question of facts as to whether there is any unauthorised or illegal construction in violation of the building rules and in deviation from the sanction plan are to be decided by the competent authority.

With these directions, the writ petition is disposed of.

There will be, however, no order as to costs.

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

(Shampa Sarkar, J.)