

08.09.2021
Sl. No.16
srm

W.P.A. No. 13035 of 2021

Shri Chandan Ghosh & Ors.

Vs.

Kolkata Municipal Corporation & Ors.

Mr. Aniruddha Chatterjee,
Mr. Surya Prasad Chattopadhyay,
Mr. Arjun Samanta

...for the Petitioners.

Mr. Alok Kumar Ghosh,
Ms. Piyali Sengupta

...for the KMC.

Mr. Amal Kumar Sen,
Mrs. Ashima Das (Sil)

...for the Respondent No.7.

Mr. Tanmoy Mukherjee,
Ms. Kankana Chakraborty

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

The writ petitioners are the adjoining owners to premises Nos.8A, 8A/1, 8A/2, Rakhal Mukherje Road, Kolkata-700025.

According to the petitioners, the respondent Nos.8 and 9 have been constructing a building by encroaching the municipal drain constructed by the Kolkata Municipal Corporation, which is used as the sewer line of the locality. According to the petitioners, the respondent Nos.8 and 9 have misrepresented before the corporation about the western side boundary of the land by showing the same as a passage instead of a drain in order to get a higher floor area ratio. Further allegations have been made that even the said passage

which has been used as a common passage by the adjacent owners has been encroached upon. The allegations are that the construction is also clogging the drain and damaging the sewer line of the said area.

Reference is made to a letter dated March 27, 2021 issued by the authority of the Kolkata Municipal Corporation under the Right to Information Act, which shows that the clogging of the sewer line had been cleared by the corporation. It also shows that the sewer line at the premises No.8A had been disconnected by the authorities.

Mr. Ghosh, learned Advocate appearing on behalf of the Kolkata Municipal Corporation, submits that the Kolkata Municipal Corporation did not find any apparent damage to the drain. Neither any encroachment on the passage had been detected.

Reference is made to a letter dated July 15, 2021 issued by the Kolkata Municipal Corporation to the petitioner No.1 from which it appears that the inspection held on the basis of the complaint of the petitioner, did not reflect any encroachment over any common passage.

The petitioners have also raised questions with regard to the fraud and misrepresentation practised by the respondent Nos.8 and 9 upon the corporation in order to obtain a sanction

plan by mis-description of the property with regard to boundaries.

Admittedly, the Kolkata Municipal Corporation held an inspection and did not find any encroachment. The allegation of damage to the drainage system has also been addressed and the sewer line has been cleared. With regard to the allegations of encroachment over the common passage, the petitioners must file a civil suit. If there are any further clogging of the common sewer line, then the Kolkata Municipal Corporation must act and proceed in accordance with law and ensure that the sewer lines are not clogged because of the construction. The construction shall go on, on the basis of the plan but the construction must not hamper the civil amenities available with regard to the usage of common sewer line and drain. With regard to the allegations of fraud and misrepresentation in obtaining the sanction plan, the petitioners are at liberty to invoke the jurisdiction of the corporation under Section 397 of the Kolkata Municipal Act, 1980. If any application is made, the corporation shall act and proceed in accordance with law.

This Court has not decided on the maintainability of such an application. It is for the corporation to decide all the issues including the maintainability of any objection/application filed for cancellation of the sanction plan.

This writ petition is, thus, 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.)