

21.
08.09.2021
Saswata.

W.P.A. 13503 of 2021

Puspa Sardar & Ors.

Vs.

The Kolkata Municipal Corporation & Ors.

Mr. Saumayen Datta
Mr. Purbangshu Chandra Mitra
Ms. Piyali Mitra

..For the Petitioners.

Mr. Swapan Banerjee, Sr. Adv
Ms. Salma Sultana

..For the State.

Mr. Achinta Kr. Banerjee
Mr. Anand Farmania

... For KMC

Mr. Kamal Mishra
Mr. Tanmoy Mukherjee

... for respondent no.7

Prima facie, an inspection has been held in the premises-in-question and the Kolkata Municipal Corporation has found some deviation. Although this Court is of the opinion that the allegation of encroachment and the boundary dispute between the parties cannot be entertained, but the issue with regard to the deviation from the sanctioned plan is a matter to be addressed by the authority as per law.

The petitioners have alleged unauthorized construction on premises no. Z/3/308/1B, River Side Road, Police Station – Nadial, Kolkata – 700044.

It is submitted by the petitioners that the petitioners are tenants of an adjoining plot and the right, title and interest of the petitioners with respect to the tenanted portion, bath and privy has been decreed by a Civil Court, *viz-a-vis* the landlord. The landlord is not before this Court nor has the landlord been made a party to the proceeding.

Mr. Mukherjee, learned advocate appearing on behalf of the respondent no.7 submits that the construction has been going on in accordance with the sanctioned plan.

Mr. Mukherjee further submits that the allegation with regard to the encroachment into the land of the petitioners over the area in which his tenanted portion, the bath and the privy are situated and also over the passage which was allegedly used by the petitioners for ingress and egress of the tenanted property, are issues which have to be adjudicated in a civil suit before an appropriate forum.

Mr. Banerjee, learned advocate appearing on behalf of the Kolkata Municipal Corporation submits on instructions that notice under Section 401 of the Kolkata Municipal Corporation

Act, 1980 was issued upon the respondent no.7 with intimation to the police authorities and some deviation has been found.

I have considered the rival contentions. The issues with regard to encroachment into the tenanted property of the petitioners' and blockage of the ingress and egress, denial of easementary right of the petitioners are matters to be decided in a civil court. As a preliminary inspection has revealed deviation from the sanctioned plan, this Court is of the opinion that the competent authority of the Kolkata Municipal Corporation should initiate a proceeding in accordance with law and reach the same to its logical conclusion. An inspection shall be held in presence of the parties. Copies of the report shall be supplied to the parties. Thereafter, a hearing should be given to the parties and a final order should be passed upon hearing all the parties and upon giving them an opportunity to place their respective cases before the Corporation. A reasoned order should be passed and communicated to all.

This Court has not gone into the merits. The issues shall be decided in accordance with law and the entire exercise shall be completed within a period of four months from the date of communication of this order.

With the above observation, the writ petition is disposed of.

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

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

(Shampa Sarkar, J.)