

06.12.2021
Sl. No.36
srm

W.P.A. No. 14284 of 2021

Sri Biswadip Basak
Vs.
Kolkata Municipal Corporation & Ors.

Mr. Subrata Mukhopadhyay,
Ms. Mandira Bhowmick
...for the Petitioner.

Mr. Jayanta Narayan Chatterjee,
Mr. Debashis Banerjee,
Ms. Nandini Chatterjee,
Mr. Supreem Naskar,
Ms. Jayashree Patra,
Ms. Pritha Sinha
...for the Respondent Nos.13, 14 & 15.

Mr. Achintya Banerjee,
Mr. Sourav Chaudhuri
...for the KMC.

Mrs. Manjuli Choudhuri
...for the Howrah Zilla Parishad.

The petitioner is a resident of Golf Green Urban Complex Phase-II, MIG-II, Block-I, Kolkata – 700095. It is the contention of the petitioner that the respondent Nos.13 to 15 have made unauthorised constructions within the complex. According to Mr. Mukhopadhyay, learned Advocate appearing on behalf of the petitioner, such constructions were not authorised by the Kolkata Municipal Corporation and sanction had not been granted for the same.

Mr. Banerjee, learned Advocate appearing on behalf of the Kolkata Municipal Corporation, submits a report which

shows that some car parking spaces have been constructed on the black top road and pavement. It has been further submitted that such constructions do not fall within the purview of the Kolkata Municipal Corporation. Reliance has been placed on a circular issued by the Kolkata Municipal Commissioner dated April 23, 2019. It appears that the corporation has taken a decision to remove encroachments from footpaths in terms of the said circular. According to Mr. Banerjee, in case there are any obstructions on the foot paths, as alleged by the petitioner, then the corporation shall take steps in accordance with the rules and classification of roads and footpaths. It is the categorical case of the corporation that the constructions of car parking spaces on the black top road and pavement do not fall within the domain of the corporation.

Mr. Debashis Banerjee, learned Advocate appearing on behalf of the respondent Nos.13 to 15, denies the allegations made by the petitioner. It is submitted that no unauthorized constructions have been made. Only the car parking spaces allotted to individual flat owners have been earmarked to avoid encroachment by outsiders, visitors and flat owners who do not have a parking space.

Be that as it may, as the petitioner has filed complaints before the corporation on the allegation of unauthorised

constructions, it is the duty of the corporation to dispose of such complaints in accordance with law. The enquiry of the corporation shall be restricted to the detection of unauthorized constructions, that is, construction without a sanction plan or in deviation of the sanction plan granted by the corporation.

With regard to the allegations of constructions not having been made in accordance with the brochure published, the remedy of the petitioner lies before another forum. It is not for the corporation to ensure that the builder must provide amenities, as reflected in the brochure. It is the duty of the corporation to ensure that no construction takes place without sanction or in deviation of the sanction plan.

The competent authority of the corporation shall make an inspection of the concerned premises in the presence of the petitioner as also the respondent Nos.13 to 15. A report shall be prepared and supplied to all the parties. Thereafter a reasoned order shall be passed upon hearing the parties and the same shall be communicated to all concerned. Needless to mention, that the said proceeding shall be reached to its logical conclusion in accordance with law on the basis of what transpires at the inspection as also at the hearing. The parties are entitled to make their appropriate submissions before the authority concerned.

The entire exercise shall be completed within a period of four months from the date of communication of this order.

This Court has not gone into the merits of the claims and counter-claims of the parties and all points will be decided by the corporation.

This writ petition is, thus, disposed of.

There will be no order as to costs.

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

(Shampa Sarkar, J.)