

03.12.2021
Sl. No.9
srm

W.P.A. No. 18529 of 2021

Basudev Prakash Basu & Ors.

Vs.

Kolkata Municipal Corporation & Ors.

Mr. D.K. Sengupta,
Ms. Sweta Saha

...for the Petitioners.

Mr. Partha Sarathi Bhattacharyya,
Mr. Sourjya Das,
Mr. Raju Bhattacharyya,
Mr. Tanweer J. Mandal

...for the Respondent Nod.8 & 9.

Mr. Tapan Comaar Dey,
Mr. D. Chakraborty

...for the KMC.

Affidavit of service is taken on record.

The petitioners claim to be the members of the Board of Directors Skyline Co-operative Housing Society Limited (hereinafter referred to as the said co-operative housing society) and reside in their respective flats in the said co-operative housing society. The petitioners are aggrieved by the action of the Kolkata Municipal Corporation in allowing a sanction for installation of a lift in a portion of one of the Blocks. The sanction has been granted in the name of the Secretary of the said co-operative housing society.

The Executive Engineer (C), Building Department, Br.-III Kolkata Municipal Corporation has submitted a report in

the form of instructions which states that the plan was sanctioned for installation of a lift to a partially IV-storeyed and partially G+IV storeyed residential building in the South-West Block of the premises in question. The construction of the lift well has commenced.

The petitioners have challenged the said sanction on the grounds that just one or two members of the said co-operative housing society without a resolution having been adopted in the Board meeting, could not have applied for the sanction for installation of the lift in the premises in question. The said co-operative housing society cannot function for the interest of the individual members and unless all the members are *ad idem* on the issue of installation of the lift within the precincts of the said co-operative housing society, the sanction could not be granted by the Kolkata Municipal Corporation. According to the petitioners, the construction of the lift will block some doors and windows of certain flats which will prevent free movement of light and air. It is submitted that the lift could not have been installed to the detriment of some of the members of the said co-operative housing society who have equal right to enjoy their flats without any hindrance and disturbance along with all amenities.

Mr. Bhattacharyya, learned Senior Advocate appearing on behalf of the Secretary of the said co-operative housing

society and one Madan Mohan Ghosh, submits that the sanction had been obtained from the Kolkata Municipal Corporation on September 21, 2020 and the construction is at an advanced stage, but the same has not yet been completed. He further submits that a suit being Title Suit No.157 of 2021 has been filed before the learned Civil Judge (Senior Division) at Sealdah on the selfsame cause of action with regard to the construction of the lift and by an ad interim order dated November 23, 2021, the parties were directed to maintain *status quo* with regard to the nature and character of the suit property which in my opinion also includes the lift, which is attached to the said multi-storeyed building. The prayer in the injunction application was for an ad interim order restraining the defendants from causing any illegal obstruction in the construction of the lift. The respondent Nos.8 and 9 prayed for a modification of the said order but the learned Civil Judge (Senior Division) at Sealdah did not modify the order.

Mr. Bhattacharyya also submits the Board resolution and other documents in order to show that approval was given for installation of the lift by the Board members including one Chandana Dey, who is a petitioner herein and also the Vice-Chairman of the said co-operative housing society.

It is submitted by the learned Advocate for the Kolkata Municipal Corporation that the sanction for installation of the lift was given by observing all the rules.

All the documents supplied by the respondents are taken on record.

First of all, as the contention of the petitioners is that they had objected to the installation of the lift and the same had been done without the consent of the Board by some members of the said co-operative housing society, the remedy of the petitioners would be under Section 102 and 103 of the West Bengal Co-operative Societies Act, 2006. The petitioners are at liberty to proceed before the appropriate forum in accordance with law. This dispute is with regard to the affairs of the society.

The second contention of the petitioners with regard to the bar of a civil suit in cases where either a sanction plan granted by the corporation or any unauthorized constructions are subject matters of challenge, the remedy of the lies before the civil court to pray for rejection of the plaint and also for others reliefs as per law. The petitioners are at liberty to approach the learned Civil Court by filing appropriate applications against the order of ad interim injunction as also in respect of the maintainability of the suit, as indicated above.

The allegations that the sanction has been obtained by practising misrepresentation and fraud upon the corporation, must be looked into by the corporation. The petitioners have already raised an objection before the Director General (Building), Kolkata Municipal Corporation, which is annexure P/4 at page 38 of the writ petition. The corporation shall treat the said objection as an objection in terms of Section 397 of the Kolkata Municipal Corporation Act, 1980 and dispose of the same in accordance with law upon hearing the parties. A reasoned order shall be passed and the parties shall be communicated the orders.

The entire issue shall be decided by the corporation within a period of two months from the date of communication of this order.

It is clarified that as *status quo* with regard to the entire building has already been granted by the learned Civil Court, no order of injunction would be necessary as the interests of the petitioners are adequately protected by the learned Civil Court. It is a fact that the lift is not operational and the works are not yet complete.

This Court has not gone into the merits of the claims and counterclaims of the parties and all the authorities shall decide the issues independently.

The writ petition is disposed of with the aforementioned directions.

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.)