

Ct. 05
Item No.07
24.12.2021
(suvendu)

WPA 20809 of 2021

[Via Video Conference]

Gautam Roy
Vs.
The Kolkata Municipal Corporation & Ors.

Mr. R.N.Chakraborty
Ms. A.De

.....for the petitioner

Mr. Sanjoy Bose
Mr. P.B.Mullick

.....for the respondent no.7

Mr. Gopal Chandra Das
Mr. Rudranil De

.....for the KMC

The petitioner seeks mandamus commanding the respondent authorities to forthwith stop the construction work undertaken by the private respondent no. 7 in a property of which the petitioner claims to be a co-sharer.

Prayer -(b) of the writ petition is inexplicably-worded and seeks a direction on the respondents to initiate appropriate demolition proceeding against the private respondent for demolishing any illegal unauthorised construction work by the private respondent.

The claim of the petitioner relates to his rights as a co-sharer of the property. The grievance

relates to reconstruction work undertaken by the private respondent in the roof of the building. The admitted fact is that the building is a dilapidated building.

Learned counsel appearing for the petitioner relies on Rule 117(4) of The Kolkata Municipal Corporation Building Rules, 2009 to contend that every terrace on the top-storey of any building shall have a common access and shall not be sub-divided. Counsel also relies on a Division Bench judgment of this Court in *Sanjeeb Chakraborty Vs. State of West Bengal* reported in 2013 (4) CHN (CAL) 600.

The prayer in the writ petition is opposed on behalf of the private respondent who relies on Deed of Conveyance dated 17th August, 1994 and Rule 3(2) (e) of the Building Rules to show that erection or re-erection or other work can be done in the roof of a building without a Building Permit. Learned counsel appearing for the private respondent also hands up a Sanctioned Plan issued by the Corporation which shows that the private respondent was given permission to carry out the work.

Learned counsel appearing for the Corporation relies on Section 4(1)(i) of The Kolkata Municipal Corporation Act, 1980 which empowers the Corporation to order removal of dangerous building and places a document dated 1st November,

2021 to show that the building requires reconstruction work.

I have heard the learned counsel appearing for the parties.

The Deed of Conveyance dated 17th August, 1994 shows that the private respondent has absolute roof right of the concerned building. The Deed also records that the building is a dilapidated building. The Building Plan further shows that the private respondent obtained the requisite permission from the Corporation to carry out the reconstruction work. There is no document on record to show that the petitioner has any right over the roof of the building or can be seen as a co-sharer in respect of the roof of the building.

Section 4(1)(i) of the Act empowers the Corporation to take appropriate measures in respect of dangerous buildings and the Deed records that the building is indeed in dilapidated condition.

Sanjeeb Chakraborty was a case where the Court was satisfied that there was a common interest between the opposing parties and any action taken by the Corporation for regularising without consent of co-owner would be illegal. The facts in the present case are different.

The petitioner has not shown any right in respect of the roof or any other document which is

subsequent to or inconsistent with the Deed of 17th August, 1994.

Besides, the writ petitioner has invited the Court to go into highly disputed questions of rights and title to the building by asking the Court to construe the effect of the Deed of Conveyance. These questions are entirely inappropriate for determination by a writ Court.

In view of the above reasons, WPA 20809 of 2021 cannot be seen as calling for any orders and is accordingly dismissed without any order as to costs.

Urgent photostat certified copy of this order, if applied for, be given to the parties on usual undertakings.

(Moushumi Bhattacharya, J.)