

20.09.2021
Sl. No.9
srm

W.P.A. No. 8019 of 2020

Smt. Nanda Guha & Ors.

Vs.

The Kolkata Municipal Corporation & Ors.

Mr. Amalesh Ray,
Ms. Mousumi Bhowal

...for the Petitioners.

Mr. Alok Kumar Ghosh,
Mr. Gopal Chandra Das

...for the Kolkata Municipal Corporation.

Mr. Bipin Ghosh

..for the State.

The dispute in this writ petition is with regard to the land belonging to the petitioners pertaining to C.S. Plot No.428(P) under C.S. Khatian No.147, Mouza-Arakpur, Revenue Survey No.42, J.L. No.39, Touzi No.56, which was within the erstwhile Tollygung Municipality and presently under the Kolkata Municipal Corporation. The moot question is whether the land comprises of a *jheel* or is only a vacant piece of land with the demarcated boundary.

It is the contention of the petitioners that C.S. Dag No.428(P) in Mouza Arakpur was surveyed by the Assistant Chief Valuer and Surveyor at one point of time when the petitioners wanted to build upon the said land. The report indicated that according to the department's records, some portion of the said land was within the *jheel* of Bikramgarh but

at the time of survey, which was held in 2007, the said area was a vacant land demarcated with boundary wall.

According to Mr. Ray, learned Advocate appearing on behalf of the petitioners, even if originally a portion of the land was recorded as a *jheel*, at present the user of the land has automatically changed during the passage of time and admittedly, as per the report, the area is a vacant land with demarcated boundaries. Thus, according to Mr. Ray, the Kolkata Municipal Corporation cannot treat the land as a *jheel* and deny the petitioners their right to submit a sanction plan in order to build on the said premises on the alleged ground that at some point of time the land comprised partly of a *jheel*.

To substantiate such contentions, Mr. Ray relies on the municipal assessment record from which it appears that the valuation of the land was changed drastically to commercial rate. Reliance has been placed on Section 180(2)(iii) of the Kolkata Municipal Corporation Act and it is further contended that the Municipal Commissioner caused a revision of the assessment by treating the land to be used for commercial purpose, upon noting the change of its user or else, the annual valuation would have remained the same as before.

It is submitted by Mr. Ray that the authorities concerned, namely, the Assistant Chief Valuer and Surveyor, Kolkata Municipal Corporation and the Assessor Collector

(South), Kolkata Municipal Corporation should be directed to dispose of the demand of justice made on behalf of the petitioner, through the learned Advocate-on-record of the petitioners, dated November 25, 2019.

Mr. Ghosh, learned Advocate appearing on behalf of the Kolkata Municipal Corporation, submits that first the authority would be required to identify the plot as to whether the Premises No.89F-Prince Golam Hossain Shah Road with regard to which the present dispute has arisen, is a part of the land that was purchased by the predecessor-in-interest of the petitioners, as mentioned in the deed of conveyance annexed to the writ petition. The description of the land purchased, is different in the sale deed. Mr. Ghosh further submits that no sanction can be given to build on a land if any portion thereof comprises a *jheel* or water body, unless the *jheel* or water body is separated from the land.

Having heard the learned Counsel for the respective parties, this Court is of the opinion that as the petitioners have been asked to pay enhanced taxes as per the assessment of the Kolkata Municipal Corporation the change of nature of the land must have been accepted by the Corporation. In such a case, the corporation should be directed to make an inspection of the land (*jheel* and vacant land) and take a decision on the contention of the petitioners as per the demand justice dated

November 25, 2019, which was received by the corporation on November 27, 2019. The appropriate authorities of the corporation, namely, Assistant Chief Valuer and Surveyor, Kolkata Municipal Corporation and the Assessor Collector (South), Kolkata Municipal Corporation shall dispose of the demand justice made on behalf of the petitioners upon hearing the petitioners and by allowing the petitioners to place all documents relating to the aforesaid matter.

It is also made clear that the authorities shall hold an inspection in order to identify the said land and *jheel* and decide whether the land can be demarcated exclusively as a land to be used for building and re-building on account of such change of user. It has to be specifically decided whether the portion which was originally *jheel* still exists or not or has been gradually filled up by natural process and has become a part of the land. The identification of the plot will also be made by the authorities.

A reasoned order shall be passed and communicated to all concerned.

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

This Court has not decided the issue of correctness of the assessment nor the observations of the surveyor. This Court is of the view that the entire issue has to be decided

afresh due to the changes in the nature of land that may have occurred in the intervening period.

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.)