

26.07.2021
Court No. 19
Item no.2
sn

WPA No. 8082 of 2020

DR. BIJOY SIDHANTA & ORS. VS. THE STATE
OF WEST BENGAL & ORS.
(via video conference)

Mr. Kumar Jyoti Tewari
Mr. Manas Kr. Das

...for the petitioners

Mr. Rajarshi Basu

..for the private respondent

Mr. Ashim Kumar Ganguly
Mr. Rama Halder

..for the State

None appears on behalf of the Kolkata Municipal Corporation when the matter is called on. Mr. Biswajit Mukherjee, learned Advocate, who usually appears on behalf of the Kolkata Municipal Corporation, is requested to appear in this matter. His appearance may be regularized.

The petitioners allege that the Kolkata Municipal Corporation wrongly granted a sanction plan in favour of the respondent no.12, one Rajesh Sarkar, proprietor of S.R. Construction. Such sanction was obtained by practicing fraud and misrepresentation.

It is the contention of the petitioners that the sanction plan was obtained by mentioning incorrect address and Ward number. Mr. Tiwari, learned Advocate for the petitioners submits that although the petitioners mentioned that the building was situated in Ward No.122, actually the property is

situated in Ward No. 115. He further submits that the respondent no.12 has encroached into the common passage.

Mr. Rajarshi Basu, learned Advocate appearing on behalf of the respondent no.12 submits that a civil suit is pending over a common passage and the writ petition should not be entertained as the allegation of the petitioners are in respect of the common passage. He next submits that the tax receipt and other documents show that the property is actually in Ward No. 122. He relies on the sanction plan and submits that plan was granted in accordance with law. He denied that fraud and/or misrepresentation had been practiced by the respondent no.12.

Mr. Biswajit Mukherjee, learned Advocate appearing on behalf of the K.M.C. submits that the allegation of the petitioners with regard to encroachment over the passage cannot be decided by the Corporation.

Having heard the rival contentions of the parties, this Court is of the opinion that the question of title and encroachment of any passage are subject matters of the suit, which shall not be decided here. However, the Kolkata Municipal Corporation has the jurisdiction to entertain an objection under Section 397 of the Kolkata Municipal Corporation Act, in

case, there is an allegation that the sanction plan of the building in question was obtained by mentioning incorrect address and ward number.

Without going into merits of the allegations of the petitioners, this writ petition is disposed of with a direction upon the competent authority of the Kolkata Municipal Corporation to dispose of the objection dated September 8, 2020 in accordance with law upon hearing the petitioners or their authorized representatives and the respondent no.12 or his authorized representative.

It is made clear that the Corporation shall consider the oral submissions and the documents supplied by the respective parties in support of their cases and pass a reasoned order. The reasoned order shall be communicated to all concerned.

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

This writ petition is thus disposed of.

There will be however no order as to costs.

Parties are directed to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)