

S/L 13
28.09.2021
Court. No. 19
GB

WPA 9080 of 2020

Kanai Prasad
Vs.
The State of West Bengal & Ors.

(Through Video Conference)

Mr. Chittapriya Ghosh,
Mr. Anirban Roy,
Mr. Mritunjay Saha,
Ms. Priyanka Saha.

...for the Petitioner.

Mr. Wasim Ahmed,
Mr. Tausif Ahmed Khan.

...for the State.

Ms. Tanushree Dasgupta.

...for the K.M.C.

The State respondents have submitted a report before this Court indicating that a title suit being Title Suit No.164 of 2016 is pending between the parties over the self-same property. The said report is kept on record.

This court is not satisfied with the cause of action pleaded, that has led to filing of the writ petition. The petitioner is a tenant under the respondent no.10. It is alleged that the respondent no.10 obtained a sanction plan and has been constructing on the premises without leaving any distance/space between the tenanted premises and the new construction. Admittedly, the respondent no. 10, is raising the construction upon obtaining a sanction plan.

The allegation that the construction has caused an obstruction to the use of the tenanted property and exercise

of the tenancy rights of the petitioner cannot be decided in the writ proceeding. The writ proceeding can only be restricted to the allegations of inaction or non-action on the part of the Kolkata Municipal Corporation. In this case, the allegation in the writ petition and the pleadings do not reveal that there has been any infraction of law by the Kolkata Municipal Corporation. Whether the landlord has been constructing in a particular way that the tenant's enjoyment of the tenanted portion has been hampered, is a landlord tenant dispute and must be decided in an appropriate civil proceeding. Restrictive and preemptive orders, if any, may be passed by the civil court in this situation, upon satisfaction of the facts in dispute. Thus, this writ petition is disposed of without any orders. This order shall not prevent the petitioner from availing all remedies available under the law and the appropriate forum will deal with the issues without being influenced by this order.

However, there will be no order as to costs.

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

(Shampa Sarkar, J.)