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ORDER SHEET

WPO No. 832 of 2021

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
ORIGINAL SIDE

SUNITI KUMAR
Versus
THE KOLKATA MUNICIPAL CORPORATION & ORS.

BEFORE:
The Hon'ble JUSTICE SHAMPA SARKAR
Date : 21st September, 2021.

[Via video conference]

Appearance :

Mr. Arif Ali, Adv.
Mr. Swapan Chakraborty, Adv.
Mr. Sarban Bhattacharjee, Adv.
Md. Sayeed Khan, Adv.
Mr. Sayan Dev Kumar, Adv.
For the petitioner.

Mr. Siva Prosad Ghose, Adv.
Mr. Chandra Bhanu Sinha, Adv.
Mr. Rohit Kumar Shaw, Adv.
For the respondent nos. 9 and 10.

Mr. Alok Kumar Ghosh, Adv.
Mr. Gopal Chandra Das, Adv.
For K.M.C.

Mrs. Sipra Majumdar, Adv.
Ms. Debarati Sen (Bose), Adv.
For the State.

The Court:- The writ petition has been filed on the ground
that the alleged sanction plan granted to the respondent nos. 9 and 10

for construction upon the premises No. 69B, Serpentine Lane, Kolkata-700 014 under Borough No. V, Ward No. 5 of the Kolkata Municipal Corporation, was granted illegally on the basis of fraud and misrepresentation practised by the said respondents. The allegations are that the area of land purchased by the respondent nos. 9 and 10 measures around 12 chittacks and a G+IV storeyed building could not be permitted on the said premises as per the building Rules.

Mr. Ali, learned Advocate appearing on behalf of the petitioner, submits that the Corporation must have been misled by the respondent nos. 9 and 10 with regard to the measurement of the land and the space around the area. That there is mis-match in the FAR (Floor Area Ratio) in respect of the alleged construction.

Mr. Ghosh, learned Advocate appearing on behalf of the respondent nos. 9 and 10, submits that the Kolkata Municipal Corporation granted a sanction plan upon verifying the documents as per law. That the said respondents purchased the land along with a two storeyed structure and on grant of permission by the Kolkata Municipal Corporation, two additional floors were being constructed, till an order of this Court had stopped such construction. He further submits that the first round of litigation was based on illegal and unauthorized construction in the absence of a sanction plan. When the petitioner came to know that the authority had duly sanctioned a building plan for two additional floors, the petitioner turned around and took another plea that

the sanction plan was obtained by practising fraud and misrepresentation. That the writ petition is harassing mala fide and filed with the intention to deprive the respondent Nos. 9 and 10 from enjoying their own property.

Mr. Ghosh, learned Advocate appearing on behalf of the Corporation, submits that vague and unfounded allegation of fraud and misrepresentation cannot be a ground for cancellation of sanction plan. He submits that there has to be a specific case of material misrepresentation and fraud made out by the petitioner while praying for cancellation of a sanction building plan. In this case, no such pleadings have been made.

Having heard the learned Advocates for the respective parties, this Court is of the opinion that the writ petition should be disposed of with the direction upon the petitioner, to approach the competent authority under Section 397 of the Kolkata Municipal Corporation Act, 1980. The said authority shall act and proceed in accordance with law by disposing of the said representation/complaint to be filed by the petitioner upon hearing the petitioner as also the respondent nos. 9 and 10.

This Court has not gone into the merits of the claims and counter claims and it is exclusively within the domain of the Kolkata Municipal Corporation to ascertain whether the sanction plan was issued as per law or whether the grounds existed for invoking the power under

Section 397 of the Kolkata Municipal Corporation Act, 1980. A reasoned order shall be passed and communicated to the parties.

The entire exercise shall be completed within three months from the date of receipt of the representation/complaint of the petitioner.

(SHAMPA SARKAR, J.)

snn.