

22.02.2022
Court No. 19
Item no.15
CP

WPA 136 of 2022
With
CAN 1 of 2022

Nafisa Khatoon
Vs.
The Kolkata Municipal Corporation & Ors.

Mr. Arijit Dey

..for the petitioner.

Mr. Srijan Nayak
Mr. S. Panda

....for the K.M.C.

Mr. Wasim Ahmed
Sk. Md. Masud

....for the State.

Mr. Ranajit Chatterjee

...for the respondent no. 9.

Mr. Avirup Chatterjee

....for the added respondent.

CAN 1 of 2022 is an application for addition of party. One, Reshma Ismat, who claims to have some connection with the property in question, has filed this application. Without deciding the right, title and interest of the said Reshma Ismat in the property in question, the applicant is added in the proceedings as she claims to be substantially interested in the construction, as a co-owner.

CAN 1 of 2022 is allowed. The applicant in CAN 1 of 2022 be added as a respondent here and

now by the learned Advocate on record for the petitioner.

The petitioner has alleged that the Kolkata Municipal Corporation (hereinafter referred to as 'the corporation'), had wrongly sanctioned a plan for construction of a building on premises no. 2H, Radha Govinda Saha Lane, Ward – 64, Borough – VII, P.S. Karaya, Kolkata – 700017 sometime in 2013. The petitioner claims that she was a tenant under her husband and other co-owners. The co-owners had decided to develop the property. A G+4 storeyed building was constructed sometime in 2019. According to the petitioner, in view of the existing relationship of landlord and tenant, the corporation could not have sanctioned the building plan in the absence of the petitioner's consent. It is submitted that the plan was obtained by practicing fraud and material misrepresentation.

Mr. Chatterjee, learned advocate appearing on behalf of the respondent no. 9, submits that the sanction was granted sometime in 2013. The owners had entered into an agreement with the respondent no. 9, who had developed the property. Development work has been completed. Thus, based on the rent receipts of 2020, issued by the husband of the petitioner to the petitioner, the tenancy of the petitioner could not be established. Moreover, the

sanction was granted in 2013 and the same could not be faulted on such a flimsy ground. The right of the tenant could not be a subject matter for a decision in a proceeding under Section 397 of the Kolkata Municipal Corporation Act.

Both Mr. Chatterjee, learned advocate appearing on behalf of the respondent no. 9, and Mr. Avirup Chatterjee, learned advocate appearing on behalf of the added respondent submit that the petitioner was never a tenant.

It is also submitted that the petitioner has annexed some electricity bills where the units are recorded as 'zero'.

These are disputed questions of fact which shall not be gone into in this proceeding. The petitioner has filed an application before the corporation which is Annexure P-5 at page 47 of the writ petition. Let the said application be disposed of in accordance with law upon hearing all the parties including the added respondent.

A reasoned order shall be passed and communicated to the parties.

The court has not gone into the merits of the claims and counter-claims of the parties and the issues shall be decided independently.

Whether the rent receipts of 2020 shall confer any right on the tenant on the basis of which the

plan which was sanctioned in 2013 should be set aside in exercise of powers under Section 397 of the Kolkata Municipal Corporation Act 1980, shall be decided by the authorities. Whether any fraud or material misrepresentation as alleged occurred would be a matter for consideration of the corporation.

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

The writ petition is, thus, disposed of. There shall be no order as to costs.

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

(Shampa Sarkar, J.)