

Sl. No.9
12.07.2022

Court No.24
B.M.

In The High Court At Calcutta
Constitutional Writ Jurisdiction
Appellate Side

WPA 387 of 2020

Jamini Ranjan Mondal
Versus
The State of West Bengal & Ors.

Mr. Sumit Ray

... for the petitioner

Mr. Alok Kumar Ghosh

Mr. Arijit Dey

... for the Kolkata Municipal Corporation

Mr. Satyajit Talukdar

Mr. Abhishek Sarkar

... for the KMDA

The matter relates to premises No. 789, Rajdanga Main Road, Kolkata-700 078. The plot in question was given on lease in favour of the petitioner by the Calcutta Metropolitan Development Authority by an indenture dated 19th June, 1996.

As per the said indenture the licensee at his own cost within five years from the date of the deed or within such further time as the authority may at its option allow in writing on sufficient and reasonable grounds, erect, construct and complete a house or building on the said land for being used for residential purpose with boundary, wall, sewer and drains in accordance with the plan sanctioned and specification as may be approved by

the appropriate authority according to the rules and regulations framed for the purpose.

The indenture further mentions that if there is any breach of any covenant on the licensee's part then in such cases, it shall be lawful for the authority at any time thereafter to re-enter upon the said land or any part thereof in respect of any breach of the licensee's covenants contained in the said deed.

According to the petitioner due to financial constraint he was not in a position to construct the building within the time as specified. A plan was submitted by the petitioner before the Kolkata Municipal Corporation for sanction on 8th February, 2013. The same has not been sanctioned by the Corporation.

The petitioner filed a writ petition before this Court praying for a direction upon the respondent authority to take a decision with regard to sanction of the building plan. The Director General (Building), Kolkata Municipal Corporation passed order on 21st August, 2015 after hearing submission made on behalf of the petitioner.

At the time of hearing the representative of KMDA stated that the prayer made by the petitioner for extension of time for making construction is under consideration.

The departmental representative of the Kolkata Municipal Corporation informed that the file cannot be located at present. As per Rule 4(3) of the Kolkata

Municipal Corporation Building Rules, 2009, the owner should have exclusive right of erection. The Corporation may not be able to accord sanction, as the applicant could not produce the registered conveyance at the time of hearing.

The order records that the prayer made by the petitioner before the KMDA praying extension of time for making construction is still under consideration. The petitioner was directed to approach the KMDA authority for a valid registered conveyance for compliance of Rule 4(3) of the Building Rules, 2009.

As the prayer of the petitioner for extension of time for making construction is pending consideration at the end of the Kolkata Metropolitan Development Authority, accordingly at this stage, the Kolkata Municipal Corporation will not be in a position to sanction building plan in favour of the petitioner.

In view of the above, the writ petition is disposed of granting leave to the petitioner to approach the concerned officer of the KMDA with his prayer for extension of time for making construction. The petitioner will also be at liberty to make a prayer for supplying the valid registered deed of conveyance in his favour for compliance of Rule 4(3) of the Building Rules, 2009.

In the event, a representation along with all connected documents in support of the claim of the petitioner is filed before the concerned authority of the

Kolkata Metropolitan Development Authority, then the said authority shall take steps to consider the prayer of the petitioner strictly in accordance with law.

The writ petition stands disposed of.

The order passed by the DG (Building), Kolkata Municipal Corporation, dated 21st August, 2015 is not interfered with.

Urgent photostat certified copy of this order be supplied to the parties, if applied for, as early as possible.

(Amrita Sinha, J.)