

12.04.2022

10

ss

W.P.A. 1755 of 2022

Soumen Saha Roy & anr.

Vs.

The Kolkata Municipal Corporation & ors.

Mr. Partha Sarathi Deb Barman

Mr. Mrinal Das

Mr. Raja Adhikary

... for the petitioners

Mr. Ranajit Chatterjee

Ms. Tanushree Dasgupta

... for the K.M.C.

Mr. Gopal Chandra Das

... for the respondent no.6

This writ petition has been filed challenging inaction of the Kolkata Municipal Corporation in supplying water to the premises situated at 32, S.N. Roy Road, Police Station Behala, Kolkata-700038, District South 24-Parganas.

The principal prayers in the writ petition are as follows:-

“(a) A writ of and/or in the nature of Mandamus commanding upon the concerned respondent authorities, each one of them, their men, agents and/or subordinates to take immediate and/or appropriate steps to install the essential water supply connection at the tenanted premises where your petitioners are currently residing;

(b) A writ of and/or in the nature of Mandamus commanding upon the concerned respondent authorities, each one of them,

their men, agents and/or subordinates to expeditiously submit a report on the inspection conducted at the tenanted premises on 29th December, 2021;

(c) A writ of and/or order and/or direction in the nature of Certiorari do issue calling upon the respondents and/or each one of them, their servants, agents or assigns to certify and transmit to this Hon'ble all the records culminating in the petition so that after perusal of the same, necessary orders may be passed and conscionable justice be done."

Prayer (b) was allowed on the first occasion and the Kolkata Municipal Corporation filed a report prepared by the Executive Engineer, Water Supply Borough XII and XIV and the Assistant Engineer (Civil), Water Supply Department, S.S. Unit, Kolkata Municipal Corporation. From the said report, it appears that the filtered water supply exists at the premises and the force of such water was normal. The supply of water up to the service mains was uninterrupted and adequate

It is submitted by Mr. Deb Barman, learned Advocate appearing on behalf of the petitioners, that Sections 254, 255 and 267 of the Kolkata Municipal Corporation Act, 1980, casts a duty upon the Commissioner of the said Corporation to ensure that the owner of the premises provides the water supply and also lays the pipe lines and fittings so that the

occupier of the premises in question could get adequate water supply.

Mr. Das, learned Advocate appearing on behalf of the respondent no.6-landlady, submits that the respondent no.6 is residing at an old-age home. That litigations are pending between the parties. The rent is being depositing with the Rent Controller and as such, the owner of the premises would not be in a position to take any steps.

Heard the parties. The power of the Municipal Commissioner under Section 254 is to permit the owner to connect the premises to the main supply of the Corporation.

Section 255 permits the Municipal Commissioner to provide a separate supply line for each of the premises, which may not have a separate supply line. The owner of the premises may lay such line for providing such connection.

Section 267 provides that the Corporation may, by a notice in writing, require the owner of the premises or the persons primarily liable to pay the tax to take a connection from the supply mains of the Corporation for the requirements of the person occupying the premises in question.

Mr. Deb Barman submits that the three provisions of law, which have been mentioned hereinabove, if read as a whole, mandates that the

Commissioner must direct the owner of the premises in question, to allow a separate line for adequate water supply to the petitioners, who are in occupation.

In the reading of the court, the provision of law may come into operation when a normal relationship existed between the landlady and the petitioners. The situation is acrimonious. The suit for eviction filed by the respondent no.6 has been dismissed for default. The said respondent is residing at an old-age home. She is aged about 82 years.

A suit for declaration of tenancy is also pending. The allegations of the writ petitioners are that the supply line has been disconnected by the respondent no.6, whereas the counter allegation is that the premises in which the petitioners are residing, never had a separate water connection. It has also been submitted that the property tax dues which the petitioners were liable to pay have not been paid.

These disputed facts cannot be decided by the Writ Court.

In view of the allegations and the counter allegations and the factual discrepancies in the respective submissions of the learned Advocates for the respective parties, and also as a civil suit is pending between the parties with regard to the tenancy and the petitioners are depositing the rent with the Rent Controller, the remedy of the petitioners in such a

situation would be to apply before the Rent Controller for supply of water on the allegation that the respondent No. 6 had disconnected the supply. Such application shall be disposed of by the learned Rent Controller in accordance with law, independently.

The petitioners may proceed under Sections 27, 35 and 36 of the West Bengal Premises Tenancy Act, 1996, whichever is applicable. If such application is filed, the learned Rent Controller shall pass necessary orders upon hearing the parties.

This order is being passed only for the purpose of disposal of the writ petition and the learned Rent Controller shall not be influenced by any observations made hereinabove.

With the above observations, this writ petition is disposed of.

There shall be no order as to costs.

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

(Shampa Sarkar, J.)