

06. 08.12.2022
Ct. No.24
Tanmoy

WPA 2361 of 2020

**M/s. Metaco India
-Versus-
The Kolkata Municipal Corporation & Ors.**

**With
IA No: CAN/3/2021**

Mr. Meghnath Dutta, Adv.,
Mr. Chandra Nath Sarkar, Adv.

...for the petitioner.

Mr. Achintya Banerjee, Adv.,
Mr. Subhrangsu Panda, Adv.

...for the KMC.

Mr. Saptansu Basu, Sr. Adv.,
Mr. Gopal Pahari, Adv.,
Ms. Mandeep Kaur, Adv.

...for the respondent nos. 5-13.

Affidavit-in-opposition filed on behalf of the private respondent nos. 5 to 13 in Court today, is taken on record.

The petitioner claims to be a tenant in the premises No. 16, Mandal Temple Lane, Police Station – New Alipore, Kolkata – 700053, Borough-X under the jurisdiction of the Kolkata Municipal Corporation (in short, 'KMC').

The KMC sanctioned plan for construction of a building at the said premises in the year 2014.

According to the petitioner, the private respondents being the owners of the said premises filed an

undertaking before the Corporation not to evict any tenant and to provide the tenant with identical area in and around the premises by mutual agreement.

The petitioner submits that after the construction was over, the private respondents intentionally and deliberately did not restore possession of the tenanted premises to the petitioner.

The petitioner filed a civil suit, praying for declaration of tenancy rights, which has been decreed in its favour.

It has been submitted that the landlords have filed a suit for eviction of the petitioner before the learned Court below. The suit itself implies that the petitioner is a tenant of the said property, and as such, the private respondents ought to restore possession of the tenanted premises to the petitioner.

Prayer has been made for a direction upon the Corporation to revoke the sanction as the condition set out in the sanctioned plan has not been complied by the persons responsible for making construction, i.e the landlords.

Learned Senior Advocate representing the private respondents submits that the suit for declaration was decreed *ex parte*. An application under Order IX, Rule 13 of the Code of Civil Procedure, 1908, is pending consideration. A cross-appeal filed by the private respondents is also pending consideration.

It has been submitted that there is no document in support of the tenancy of the petitioner.

Learned Advocate representing the KMC submits that it is for the petitioner to produce evidence before the Court in support of its tenancy.

Upon hearing the submissions made on behalf of the parties, it appears that the construction in question started in the year 2014. The sanction was valid till the year 2019. The petitioner must have moved out voluntarily after the construction started. There is no document evidencing any agreement regarding restoration of possession of the tenanted premises between the petitioner and the private respondents. The petitioner banks upon the undertaking which was allegedly filed by the landlords at the time of obtaining the sanctioned plan. The name of the tenants and the area which would be restored to the tenants in the new construction is not mentioned in the sanctioned plan. In such a situation it is not possible for the writ Court to restore possession of any portion in the newly constructed structure in favour of a tenant who has been allegedly dispossessed from the premises at the time of construction of the same.

The petitioner relies upon the order passed in the suit declaring his tenancy right.

It will be open for the petitioner to initiate appropriate proceeding for recovery of possession, in accordance with law. At this stage, no direction can be

passed upon the KMC to put back the petitioner in the newly constructed building without appropriate orders passed by the competent Court.

The writ petition being WPA 2361 of 2020 and the connected application being IA No: CAN/3/2021 stand disposed of.

Let urgent photostat certified copy of this order, if applied for, be made available to the parties upon compliance with all necessary formalities.

(Amrita Sinha, J.)