

28.01.2022
Item No.5
srm

W.P.A. No. 3216 of 2020

Dr. Pradip Kumar Basu & Ors.

Vs.

The State of West Bengal & Ors.

Mr. Milan Kumar Bhattacharya,
Mrs. Sulagna Bhattacharya (Bagchi)
...for the Petitioners.

Mr. Biswajit Mukherjee,
Mr. Subhrangsu Panda
...for the KMC.

Mr. Dhiman Ray,
Mr. Dip Chanda
...for the Respondent Nos.9 to 18, 20&21.

The subject matter of challenge in this writ petition is non-grant of permission/sanction to the petitioners for installation of a lift in the housing complex, namely, Kankurgachi Samabay Abasan Samity (hereinafter referred to as the said housing complex). The petitioners are some of the residents of the said housing complex and senior citizens.

Mr. Bhattacharya, learned Senior Advocate appearing on behalf of the petitioners, submits that the said housing complex does not have a lift, as a result of which, they have to negotiate stairs at this old age. He submits that some of the petitioners also suffer from serious diseases. According to him, the Kolkata Municipal Corporation although calculated

the expenses that would be incurred for the purpose, later refused to accept the said amount on the ground that a “no objection” from the said housing complex (society) would be necessary. The building is G+IV storeyed and the attempts of the petitioners in trying to install the lift from 2014 have been obstructed by some of the other occupants/members of the said housing complex. Mr. Bhattacharya has made a fair, noble submission that the lift shall be installed at the cost of the petitioners under the supervision of a structural engineer empanelled with the Kolkata Municipal Corporation and all the occupants would be allowed to use the same. Records reveal that the petitioners represent the maximum number of the members of the society.

The learned Advocate for the respondent Nos.9 to 18, 20 and 21 submit that they do not oppose the construction of the lift, *per se*, but the area earmarked for construction of the lift was not proper. The installation of the lift in the said place, would block the windows of the flats owned and occupied by the opposing members. It is submitted that there are other spaces within the complex where the lift could be installed and it is prayed that unless the parties are agreeable to the site where the lift is to be installed, no mandatory order may be passed by this Court. It is further submitted that the said

housing society shall issue the “no objection” once the KMC inspects and identifies an appropriate location.

Mr. Mukherjee, learned Advocate appearing on behalf of the Kolkata Municipal Corporation, submits that unless the society grants a “no objection”, the rules of the Kolkata Municipal Corporation do not permit grant of sanction and as such, the Kolkata Municipal Corporation was not in a position to grant the necessary sanction for installation of the lift.

This Court is of the opinion that the members of the society and the office bearers of the society should find a solution to the problem by demarcating the area where the lift may be installed under the supervision and direction of KMC. Objections from the members to the installation of the lift seem unreasonable, especially because senior citizens are residing in the housing complex. They face serious difficulty in their day to day lives. Elderly people who need immediate medical attention also face a lot of hardship and often, it becomes impossible to carry the ill and infirm down the stairs to the hospitals and doctors for medical attention. Thus, the said society, who is a respondent before this Court, must not object unnecessarily to the installation of the lift. However, as it is the submission that the society and the members would not object if the lift is installed in a place which would not

prevent the flow of light and air to the residences of such members, this Court thinks it fit to remit the matter back to the Kolkata Municipal Corporation. The Kolkata Municipal Corporation shall act according to the following directions:

- (a) The Executive Engineer (Building Department), Borough-III, Kolkata Municipal Corporation, that is the respondent No.6, shall cause an inspection of the said housing complex in order to identify the site where the lift could be installed without causing hindrance to the any of the parties.
- (b) 48 hours advance notice of such inspection shall be given to the petitioner No. 1 and the respondent No.11, who shall be the authorized representatives of the respective parties.
- (c) A report of the inspection shall be prepared and handed over to the parties.
- (d) Parties shall be entitled to respond to the said report.
- (e) A final decision shall be arrived at by the said Executive Engineer and accordingly action shall be taken in accordance with law, with regard to grant of permission for installation of the lift.

It is made very clear by the Court that the society which is amenable to the writ jurisdiction of the Court must co-

operate with the authorities of the Kolkata Municipal Corporation. All parties shall be entitled to indicate the spaces in which the lift may be constructed for the convenience of all. The authorities of the Kolkata Municipal Corporation shall take in consideration such submissions and make an assessment as to how the issue could be resolved by taking care of the contentions of the parties. The Court expresses its wish that the parties under the supervision of the Kolkata Municipal Corporation must resolve the dispute and find a convenient place for installation of the lift. A lift is an absolute necessity in the present case.

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

This writ petition is, thus, disposed of.

There will be no order as to costs.

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

(Shampa Sarkar, J.)