

02.03.2022
Item no.44.
Court No.6.
AB

**F.M.A. 1155 of 2019
With
IA CAN 2 of 2019
(Old CAN 4539 of 2019)**

Gayatri Keshri

Vs

The Kolkata Municipal Corporation & Others

Mr. Asif Hussain,
Ms. Laboni Panfor the Appellant.

Mr. Achintya Kr. Banerjee,
Mr. Gopal Chandra Das ...for the K.M.C.

Mr. S.A. Moqued,
Mr. Numan Shah,
Ms. Arzun Naharfor the Respdt. No.12, 13.

By consent of the parties, the appeal and the application are taken up together for hearing.

The writ petitioner had approached the learned Single Judge complaining that the private respondents had made unauthorised construction. Her further grievance was that the representation of the writ petitioner before the Corporation Authorities had not been considered at all.

The learned Judge was told that a partition suit was pending between the writ petitioner and the private respondents concerning the property in question.

It was further brought to the notice of the learned Judge that a deed of assignment of lease had been executed by the writ petitioner in favour of the private respondents. The learned Judge observed that these facts were not stated in the writ petition and that amounted to suppression of material facts. On that ground, the learned Judge dismissed the writ petition. Hence this appeal.

We have heard learned Counsel for the parties. The fact of pendency of the partition suit or execution of deed of assignment may not be very germane to the grievance that is sought to be ventilated by the writ petitioner. However, we are not inclined to go into the merits or correctness of the allegations made by the writ petitioner regarding unauthorised construction by the private respondents. In our opinion, a competent Officer in the Corporation should look into the matter.

Accordingly, we direct the Director General (Building), being the respondent no.4 herein, or any Officer authorised by him to consider the appellant's representation dated August 3, 2018 (Annexure "P-3" to the writ petition) and take a reasoned decision thereon in accordance with law and the applicable rules and regulations, within a period of three months from the date of receipt of a copy of this order along with a copy of the representation, after giving an opportunity of hearing to all concerned parties

including the appellant/writ petitioner and the private respondents. The decision so taken shall be communicated to the concerned parties within a week from the date of the decision.

Needless to say, if the concerned Officer finds merit in the complaint made by the appellant, appropriate action will be taken by him. We clarify that the consideration by the Director General or his nominated Officer would be restricted to whether or not there is unauthorised construction at the instance of the private respondents and nothing further. Question of title or other disputes between the appellant and the private respondents will not be gone into by such Officer. If the Officer deems it necessary, he will be at liberty to request the Thika Controller to attend the hearing before him.

Since we have not called for affidavits, the allegations in the stay petition are deemed not to be admitted by the respondents.

FMA No.1155 of 2019 along with CAN 4539 of 2019 is, accordingly, disposed of.

Urgent photostat certified copy of this order, if applied for, be supplied expeditiously after compliance with all the necessary formalities.

(Kausik Chanda, J.)

(Arijit Banerjee, J.)