

Sl. No.2
03.11.2022

Court No.24
B.M.

In The High Court At Calcutta
Constitutional Writ Jurisdiction
Appellate Side

WPA 9374 of 2021

M/s. Sunshine
Versus
The Kolkata Municipal Corporation & Ors.

Mr. Nitai Ch. Saha,	
Mr. Abhijit Chandra Majumder	
	... for the Petitioner
Mr. Dwijadas Chakraborty,	
Sk. Sajauddin.	
	... for KMC
Mr. Jaydeep Banerjee.	
	... for the State
Mr. Satyajit Talukdar,	
Mr. Abhishek Sarkar.	
	... for KMDA.

The petitioner is aggrieved by the communication dated 8th January, 2021 and the notice dated 9th March, 2021 issued under Section 53 of the West Bengal Town & Country (Planning & Development) Act, 1979. The said notice was issued in respect of premises no.77A, Pathakpara Road, Ward No.142, Borough-XIV.

The petitioner relies upon an information dated 8th July, 2019 under the Right to Information Act mentioning that the premises no.77A, Pathakpara Road is not included in the tank list of Environment and Heritage Department of the Corporation.

The specific case of the petitioner is that no water body exists in the said premises. The petitioner has filed

an undertaking before this Court that no construction will be made upon the land bearing CS Plot No.4209 corresponding to RS & LR Dag No.12579.

The Block Land and Land Reforms Officer, Kolkata, South 24 Parganas has filed a report before this Court signed on 28th July, 2022 mentioning that CS Plot No.4209 corresponding to RS/CR Plot No.12579 is water body as per recorded classification.

The new pond entry, tank list of the Kolkata Municipal Corporation records that in premises no.77A, Pathakpara Road, area of the water body as per NRSA (aerial map) is 641.3915 square meter.

A fresh spot inspection report has been filed before this Court today signed by the Sub Assistant Engineer (Civil), Assistant Engineer (Civil) and the Executive Engineer (Civil), Environment & Heritage Department of the Kolkata Municipal Corporation mentioning that a joint inspection was held on 21st October, 2022 in the presence of the owner of the premises. During inspection, it was observed that there is existence of a one two storied old residential building and rest of the above plot is vacant land bounded by boundary wall. There is no physical existence of water body in the said premises. The report also mentions that as per NRSA aerial map, the water body exists.

From the documents annexed to the writ petition, it appears that though aerial map suggests existence of a water body but physical inspection does not.

Action under Section 53 of the West Bengal Town & Country (Planning & Development) Act, 1979 is an appealable one. Section 53(3) of the said Act prescribes the manner in which a person aggrieved by notice issued under Section 53 is to act.

It will be open for the petitioner to apply in terms of the provision(s) of law.

The writ petition, accordingly, stands disposed of.

The petitioner will be entitled to rely upon all documents in support of its case before the appropriate authority.

The inspection report filed in Court today is taken on record.

Urgent photostat certified copy of this order, if applied for, be given to the parties on completion of usual formalities.

(Amrita Sinha, J.)