

Sl. No.6
17.06.2022

Court No.24
B.M.

In The High Court At Calcutta
Constitutional Writ Jurisdiction
Appellate Side

W.P.A 10390 of 2022

Anuradha Sen
Versus
The Kolkata Municipal Corporation & Ors.

Mr. Biswaroop Bhattacharjee
Mr. Ashis Kumar Mukherjee
Mr. Saurabh Prasad
Mr. Anirban Gope

... for the petitioner

Mr. Asoke Kumar Banerjee, Sr. Adv.

Mr. Arijit Dey

... for the Kolkata Municipal Corporation

Today when the matter was taken up for consideration by the Court the provision of Section 39 of the Kolkata Municipal Corporation Act, 1980 mentioning the power and function of the Municipal Commissioner has been relied upon by the learned senior advocate representing the Kolkata Municipal Corporation.

The provision of Section 17A of the West Bengal Inland Fisheries Act, 1984 has also been placed in Court.

It has been submitted that no person is entitled to fill up a water body. In the event, steps have been taken for filling up the water body in contravention of the Fisheries Act, then the Corporation may take steps to restore the water body to its original state.

It appears from the submissions made on behalf of the Corporation that no prior notice was given to the petitioner before entering into her premises for the purpose of excavating the land allegedly to restore the water body to its former state. According to the Corporation the same could not have been done because the record of the Kolkata Municipal Corporation has not been updated by the petitioner, who after purchase of the property did not intimate the fact of sale of the aforesaid premises to the Corporation.

It has been contended that it was the legal duty of the purchaser to intimate the Corporation after purchasing the said property for mutating her name in the municipal record. As there is no record of the petitioner in the Corporation accordingly, the Corporation was not in a position to issue any notice to the petitioner who claims to be the owner of the property in question.

The records of the Kolkata Municipal Corporation mentions that premises No.93, Bhupen Roy Road, Ward No.120, (KMC), Police Station Behala, Kolkata-700 034, comprising of 11 Cottahs and 23 sq. ft. is recorded as land plus tank. The area of the land and the dimension of the tank is not mentioned in the said record.

According to the petitioner she along with her husband, since deceased, purchased only 8 Cottahs 8 Chittacks (more or less) of land of the said premises.

The sale deed does not mention about the water body. The petitioner submits that she is not aware as to whether any water body existed in the said premises or not.

In view of the above, this Court thinks it fit to direct the men and agents of the Kolkata Municipal Corporation to make a physical inspection of the property in question to ascertain as to the position where the water body actually existed.

The petitioner will be entitled to produce all evidences in support of the nature of the land at the time of inspection.

By consent of the parties, the date of inspection is fixed on 25th June, 2022 at 12 noon. It is made clear that no further notice of inspection is required to be issued by the Kolkata Municipal Corporation to the petitioner as the date of inspection is being fixed upon consent of the parties.

The inspection report shall be prepared and served upon the petitioner or her authorized representative within a week thereafter.

If it transpires from the inspection report that the portion of the land which the petitioner purchased comprised of the water body, then the Kolkata Municipal Corporation shall direct the petitioner to take steps for restoring the water body to its previous state

within the time to be specified by the Kolkata Municipal Corporation.

Till a formal decision is taken and communicated by the Kolkata Municipal Corporation to the petitioner about the actual position with regard to existence of the water body and further steps to be taken in the matter, the parties are directed to maintain status quo as on date till a week after the order is communicated to the petitioner.

With the aforesaid directions the writ petition stands disposed of.

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

(Amrita Sinha, J.)