

09.02.2022
Item No.6
srm

W.P.A. No. 14565 of 2021

Mita Debnath

Vs.

Kolkata Municipal Corporation & Ors.

Mr. Soumya Mazumder,
Mr. Arjun Mookherjee

...for the Petitioner.

Mr. Ashok Kumar Banerjee,
Mr. Aloke Kumar Ghosh,
Mr. Gopal Chandra Das

...for the KMC.

Mr. Manoj Malhotra,
Mr. Suman Dey

...for the State-Respondents.

Affidavit of service is taken on record.

The petitioner challenges a notice issued by the Executive Engineer (Civil), Environment & Heritage, Kolkata Municipal Corporation dated September 28, 2020.

According to the petitioner, the notice suffers from factual errors and has been issued without jurisdiction. It is contended that the petitioner has been running a shop from the land situated at 176/Q Thakurpukur Road, much before the law applied by the authorities in the order impugned notice, had come into force. It is submitted that the law could not be applied retrospectively, thereby asking the person responsible to restore the lands to its original condition.

It is the specific contention of the petitioner that the shop room has been constructed on the land in question and has been standing thereon since long. Records of rights have been relied upon to show that the said land has been recorded as a *danga* land. The certificate of enlistment granted by the Kolkata Municipal Corporation in respect of the said shop, the bills raised by the Calcutta Electric Supply Corporation Limited and other documents have been annexed to the writ petition in support of the contention that the shop has been running for sometime and the land was never recognized as a water body.

Mr. Banerjee, learned Senior Advocate appearing on behalf of the Kolkata Municipal Corporation, denies the allegations made by the petitioner. It is contended that the petitioner has not been running the shop but her sons have been running the shop. The law authorises and casts a duty upon the Commissioner to ensure that water bodies and depressed land, both natural and artificial, shall not be filled up or built upon. If any person develops or fills up any water body or depressed land, the offence was punishable with penal consequences. Accordingly, the Kolkata Municipal Corporation has also lodged an FIR for the alleged penal offence. It is submitted that the person responsible is out on

bail. Mr. Banerjee, however, denies that the authorities have forcefully stopped the business from the said shop room.

Having heard the rival contentions of the parties, the issues which have cropped up are as follows:

- (a) Whether the notice/order dated September 28, 2020 could have been issued by applying the law retrospectively.
- (b) Whether the contention of the petitioner that the shop room has been existing on the said land from much before 1994 was correct or not.
- (c) Whether the petitioner had indulged in any activity by unauthorisedly filling up and/or raising the level of the area or by making any development on the said land.
- (d) Whether the record of rights classifying the land as *danga* would come in the way, in the issuance of the order and;
- (e) Whether subsequent change in the character of the land would entitle the authorities to proceed under the law against the person responsible.

The petitioner has already replied to the authorities by a representation dated October 9, 2020. In the opinion of the Court, as there are disputed questions of facts, as pointed out hereinabove, the competent authority of the Kolkata Municipal Corporation is directed to cause an inspection of the land in question in the presence of the parties and prepare

a report. A copy of the report be served on the person responsible. The petitioner will be at liberty to reply to the report and furnish all the necessary documents in support of her contention. The petitioner shall be allowed to adduce both documentary and oral evidence at the time of hearing. Thereafter, upon hearing the petitioner or her representative pass a reasoned order. Such reasoned order shall be communicated to the person responsible. The order shall deal with the issues which have been framed by this Court in this order.

This Court has not gone into the merits of the case in so far as the factual aspects are concerned and also the legal position at this stage. The Court is of the opinion that the authorities are required to answer the queries of the Court at the first instance.

As it is submitted by Mr. Banerjee that the authorities have not forcefully stopped the business. The business will commence, provided the petitioner or her sons comply with other formalities required under the law for running the business.

The petitioner and/or the persons responsible are injuncted from changing the nature and character of the land in question by either filling up the same or raising the level of the land in question in any manner whatsoever.

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.)