

15.3.2022
Court No. 19
Item no.42
sn

WPA 14838 of 2021

Birendra Nath Poirra & Anr.
Vs.
The Kolkata Municipal Corporation & Ors.

Mr. Deepak Kumar Mookherjee.....for the petitioners

Mr. Raghunath Chakraborty
Ms. Sonali Ghosh Basu
Ms. Sonali Sengupta
..for the respdts.8-10

Mr. Debjit Mukherjee
Mr. Dipankar Ghosh
..for the KMC

Mr. Pantu Deb Roy
Mr. Subrata Guha Biswas
..for the State

The petitioners allege that the respondent nos.
8 to 10 have constructed a bath-cum-privy above the
bed room of the petitioners on the first floor of
premises no. 55A, Bechu Chatterjee Street, Police
Station Amhrest Street, Kolkata 700 009.

Learned advocate for the petitioners submits
that the petitioners purchased the ground floor of the
said building sometime in 2014. According to the
petitioners, the construction of the bath-cum-privy
on the first floor was without permission from the
Kolkata Municipal Corporation. Reliance is placed on
Rule 109 of the Kolkata Municipal Corporation

Building Rules, 2009 in order to show that the construction of privy should not be directly over any room other than a latrine, or a water closet or a terrace.

Hence, the writ petition has been filed for a direction upon the Kolkata Municipal Corporation to take steps in respect of aforementioned construction of the respondent nos. 8 to 10.

Mr. Chakraborty, learned advocate for the respondent nos.8 to 10 submits that the Corporation had granted permission in 2013 in terms of Rule 4(2) of the Kolkata Municipal Building Rules, 2009. Copy of the sanction plan has been handed over to the Court. He further submits that the petitioners purchased the ground floor after such permission was granted and the construction was completed. Thus, according to Mr. Chakraborty, there has been no illegal construction of the bath room and the privy. He submits that the bathroom and the privy has been constructed above the pump room and not the bed room.

Heard the rival contentions of the parties. This Court finds that Rule 109(b) of the Kolkata Municipal Corporation Building Rules, 2009 provides that the construction of a bathroom, privy and water closet should not be made directly over any room other

than a latrine or water closet or washing place or a bath room or a terrace, unless it has a water tight floor.

The claims and counter claims of the parties have given rise to certain factual disputes, which cannot be adjudicated by the Writ Court. It also appears that the demolition case had been initiated by the Corporation against the predecessors-in-interest of the respondent nos. 8 to 10.

It is submitted by Mr.Chakraborty that the said demolition case was with regard to some construction on the second floor and the case was disposed of by the Corporation upon granting regularization.

Mr. Mukherjee, learned advocate for the Corporation, however, submits that as per his instructions, a stop work notice has been issued. The report filed by the Corporation is taken on record.

In this case, the subject matter of the dispute is with regard to some construction of a bath room and water closet on the first floor, which has created blockage of the drainage system causing environmental pollution. The petitioner has been living in discomfort due to the foul smell emitting from the said construction.

The Court directs the competent authority of the Corporation to dispose of the complaint of the

petitioners dated June 5, 2020 in accordance with law, by hearing the parties and by passing a reasoned order in accordance with law. Prior to such hearing, an inspection shall be made. A report shall be prepared. Parties shall be supplied the report. Parties shall file their written statements and all documentary evidence in support of their claims. The order shall be communicated to the parties.

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

The writ petition is disposed of without any order.

There will be however no order as to costs.

Parties are to act on the server copy of this order and/or learned advocate's communication.

(Shampa Sarkar, J.)