

Item No. 28

29.09.2022
Ct-24

In The High Court At Calcutta
Constitutional Writ Jurisdiction
Appellate Side

WPA 22007 of 2022
Chandan Ghosh & Ors.

v.

The Kolkata Municipal Corporation & Ors.

Mr. Bikash Ranjan Bhattacharjee
Mr. Dibyendu Chatterjee
Ms. Piyali Paul
... for the petitioners.

Mr. Tanmoy Mukherjee
Ms. Kankana Chakraborty
Mr. Souvik Das
Mr. Rudranil Das
Mr. K. R. Ahmed
... for the respondent nos.8 & 9

Mr. Alok Ghosh
Mr. Swapan Debnath
Ms. Piyali Sengupta
... for KMC

Ms. Anwari Quraishi
Ms. Zainab Tahur
... for the State.

The petitioners are aggrieved by the order passed by the Special Municipal Commissioner (Revenue) allegedly in compliance of an order passed by this Court on September 8, 2021 in WPA 13035 of 2021.

The Special Municipal Commissioner rejected the prayer of the petitioner for invocation of Section 397 of the Kolkata Municipal Corporation Act, 1980.

It appears that the dispute between the petitioners and the private respondent is with regard to a common

passage. The Special Municipal Commissioner was of the opinion that the private respondent was not guilty of encroachment.

The specific case of the petitioners is that the private respondent has shown the common passage as his private passage and has obtained the sanctioned plan.

The aforesaid contention of the petitioners is denied by the private respondents.

The petitioners pray for a direction upon the Corporation for holding further physical inspection as, according to the petitioners, the earlier inspection was held without giving prior notice to the petitioners.

I am convinced after hearing the submissions made on behalf of the parties that the issue cannot be decided by the Municipal Commissioner. There are disputed question of facts which are required to be decided upon examination of witnesses by the competent civil forum. The Municipal Commissioner will not be the appropriate authority to decide the right, title, interest and possession of the common passage which is the bone of contention between the two sides.

In view of the above, the entire issue of the common passage is left open to be decided by the competent civil Court as and when the case is filed by either of the parties.

The Civil Court shall hear and decide the matter on merits without being influenced by any of the observations passed by the Special Municipal Commissioner of the Kolkata Municipal Corporation in the order dated July 19, 2022.

The writ petition stands disposed of.

Urgent photostat certified copy of this order, if applied for, be given to the parties after completion of all legal formalities.

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(Amrita Sinha, J.)