

WPA 26111 of 2018

Mehmood Alam
Vs.
Kolkata Municipal Corporation & Ors.

Mr. Nilanjan Bhattacharjee
Mr. Sanjoy Karar
...for the petitioner

Mr. Ranajit Chatterjee
Ms. Manisha Nath
...for the KMC

Mr. Pious Pritam Bose
...for the respondent no. 5

In the writ petition the construction made by the respondent no. 5 on a portion of land at ground level which is alleged to have been made without obtaining any permission from the concerned authority of Kolkata Municipal Corporation (for short “KMC”) has been put under challenge.

Petitioner while questioning such construction measuring 12’ 3” X 4’0” and height 4’6” (approximately) barricaded by M.S grill has submitted that such construction has encroached upon a passage adjacent to the premises of the petitioner which the petitioner has got right to use based on a decree passed in Title Suit No. 389 of 1966 dated 3rd July, 1979. Copy of the decree has been produced before this Court and it appears from the concluding portion of the said decree that a right of easement over the suit passage was granted in favour of

the writ petitioner herein who was one of the plaintiff in the said suit as submitted by the learned advocate representing the writ petitioner.

Based on such decree it has been contended on behalf of the petitioner that he has got right over the passage on which alleged construction was made by the respondent no. 5 as described in the report dated 22nd April, 2019 of the Assistant Engineer (C) Building Department, Br.-IX, KMC. Petitioner has accordingly prayed for demolition of such construction since according to the petitioner no plan was sanctioned by the concerned authority of KMC and the construction has been made on the passage on which petitioner has common right of user.

Mr. Ranajit Chatterjee, learned counsel representing the Kolkata Municipal Corporation has drawn attention to the report filed by the Assistant Engineer dated 22nd April, 2019 which is part of a record of the writ petition wherefrom it appears that the KMC did not take steps against such construction since it was not decided whether such passage belongs to the respondent no. 5 or the petitioner has got right over the said passage. According to the KMC if the respondent no. 5 is the sole owner of such passage in that event considering the nature of construction which has been made on the portion of the said passage the same does not require approval by the KMC.

Respondent no. 5 is represented by the learned advocate.

Considering the submissions made on behalf of the respective parties this Court directs the Executive Engineer of Kolkata Municipal Corporation Br.-IX to take a decision, if any representation is made by the petitioner against such construction made by the respondent no. 5 within a period of fortnight from this date to the said Executive Engineer.

While taking such decision the Executive Engineer shall hear the petitioner as well as the respondent no. 5 in order to ascertain the ownership of the passage on which alleged construction has been made by the respondent no. 5.

Petitioner shall be at liberty to rely upon the decree of the Civil Court passed in Title Suit No. 389 of 1966. Such decision is to be taken by the Executive Engineer within 8 (eight) weeks from the date of receipt of the representation, if made by the petitioner. If on consideration of the issue Executive Engineer finds that petitioner has right over the said passage in that event necessary order to be passed by the Executive Engineer for demolition of the construction made by the respondent no. 5 in accordance with law. The decision to be taken by the Executive Engineer pursuant to the direction passed by this Court today to be communicated

to the petitioner and respondent no. 5 within 2 (two) weeks thereafter.

The learned advocate of the petitioner is granted leave to add Executive Engineer, Br.-IX, Kolkata Municipal Corporation as an additional respondent in the writ petition in course of this day by amending cause title of the writ petition.

With the aforesaid direction, the writ petition stands disposed of.

However, there shall be no order as to costs.

Urgent photostat certified copy of the order, if applied for, be given to the parties, upon usual undertakings.

(Saugata Bhattacharyya, J.)