

23.03.2022
Court No. 19
Item No.5
sn

WPA 10065 of 2020

Sk. Obaidur Rahaman
Vs.

The Kolkata Municipal Corporation & ors.

Mr. Subir Sanyal
Mr. Saunak Bhattacharyya
Mr. Sagnik Roy Chowdhury
Mr. A. Basu
Mr. Saunak Mondal

.....for the petitioner.

Mr. Alak Kumar Ghosh
Mr. S.K. Debnath

.....for the K.M.C.

Mr. Indranath Bhattacharjee
..for the respondent nos.5-24 & 25(a) to 25(d)

Mr. Indranath Bhattacharjee, learned advocate
appears on behalf of the respondent nos.5-24 & 25(a)
to 25(d).

The petitioner is one of the co-sharers of the
premises situated at L.R. Dag No. 335,336 and 337,
Mouza Garden Reach, Police Station Raja Bagan,
bearing premises no. Q-639/1 and Q-639/2, S.A.
Farooquie Road, (Akra Road) in Ward No. 139, of the
Kolkata Municipal Corporation, Kolkata 700 024.

The allegation is that the building plan which
was sanctioned in favour of the vendor of Sk.
Shaukat Ali and others were obtained by fraud and
misrepresentation.

Prayer has been made for cancellation of the building plan no. 2018150002 dated May 11, 2018 issued in favour of the respondents, represented by Mr. Indrajit Bhattacharjee.

Mr. Sanyal, learned advocate for the petitioner submits that, although admittedly, Sk. Amanulla and one Sk. Abdul Hamid had expired some time in 2016, the building plan was sanctioned on the basis of an application filed by the deceased persons along with others. Such sanction could not have been granted as the deceased persons could not have applied for the sanction and the thumb impressions of the two deceased persons on the application were not genuine.

It is further submitted that a partition suit is pending between the parties before the learned Civil Judge, Senior Division, Alipore, District 24 Parganas (South) being Title Suit No. 949 of 2015. The heirs of the deceased had already been substituted in the Title Suit by an order passed some time in 2016. According to Mr. Sanyal, the Corporation was apprised of such situation before the plan was sanctioned, but the Corporation proceeded to sanction the plan on the basis of the records produced before the Corporation. According to Mr. Sanyal, although the civil court had rejected his client's prayer for injunction in the partition suit,

such rejection shall not preclude the petitioner from praying for cancellation of the plan. The Court must consider the background in which the plan was sanctioned by the Corporation. He further submits that neither Sk. Shaukat Ali nor the other private parties have been able to contradict the factum of death of the two erstwhile co-sharers, by producing documents to the contrary. As such, it is submitted that even if the civil court did not grant an injunction by stopping the construction, the interference of this Court cannot be prevented in a situation where the Corporation had failed to discharge its duties under Section 397 of the Kolkata Municipal Corporation Act, 1980.

At the time of admission of the writ petition, the Corporation was directed to file a report. Such report in the form of an affidavit has been filed before this Court. The Corporation has specifically averred that 13 thumb impressions were present in the building permit. The other documents before the Corporation were verified and checked. The land records obtained from the office of the Block Land & Land Reforms Officer were also checked and the sanction was granted. It is submitted that the Corporation was not aware of the fact that two of the applicants whose thumb impressions were available

on the permit, were already dead when the application was filed.

According to Mr. Sanyal, such application for sanction was filed in 2017, much later than the death of the two co-sharers. By then, the heirs of the deceased were already impleaded as parties in the suit. The Corporation ought to have verified this position before granting the sanction in 2018.

Mr. Ghosh submits that when the matter was brought to the notice of the Corporation, in order to be sure of the fact that Sk. Amanulla and Sk Abdul Hamid were alive at the time of grant of the permission/sanction, the Corporation asked the applicants to affirm an affidavit before the learned First Class, Judicial Magistrate at Alipore with regard to the fact that Sk. Amanulla and Sk Abdul Hamid and others were the only co-sharers. Such affidavit was affirmed and the Corporation on the basis of such affidavit granted the sanction. The Affidavit affirmed on February 20, 2021 bears the thumb impression of Sk. Abdul Hamid and signature of Sk. Amanulla.

Mr. Indrajit Bhattacharjee, learned advocate for the respondent nos. 5-24 & 25(a) to 25(d) in this proceeding submits that in the partition suit, the prayer for injunction was refused. Such order of rejection was confirmed by the High Court. Thus,

there was no bar under the law preventing the said respondents from proceeding with the construction. He further submits that some of the co-sharers of the said property had sold their undivided shares to the respondent nos.5 and others and the said respondents have every right to own and possess and develop their undivided demarcated portion specially, in view of the rejection of the order of injunction.

Heard the learned advocates for the respective parties.

The proceeding in the civil suit as also in the Criminal case initiated by the petitioner, shall continue independently and irrespective of the order passed in the writ petition.

In this writ petition, the question that has been raised is whether the Corporation has acted in accordance with law, while sanctioning the building plan, when specific allegations had been made before the Corporation that the thumb impression of two persons which had been put, had died.

The law provides for a remedy in such cases and the Corporation is the authority, which has exclusive power to adjudicate the issue as to whether the sanction plan had been issued on the basis of material misrepresentation or fraud practiced by the party who has obtained such sanction.

Under such circumstances, this writ petition is disposed of, granting liberty to the petitioner to approach the competent authority of the Corporation in accordance with law. If such complaint is lodged, the Corporation shall dispose of the same upon hearing the petitioner as also the representatives of the respondent nos. 5-24 & 25(a) to 25(d).

A reasoned order shall be passed and communicated to all concerned.

Parties shall be entitled to file their documents as also adduce oral and documentary evidence before the Corporation. The Corporation shall pass a reasoned order and communicate the same to all concerned.

This Court has not decided the merits of the allegations, as the adjudicating body in this case is the Corporation. The observations are tentative and shall not prejudice the other proceedings.

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

Accordingly, the writ petition is disposed of.

There will be however no order as to costs.

All parties are directed to act on the basis of server copy of this order and/or the learned advocate's communication.

(Shampa Sarkar, J.)