

OD-4

ORDER SHEET

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
ORIGINAL SIDE

WPO/12/2019
SEFALI SINGH AND ORS.
VERSUS
KOLKATA MUNICIPAL CORPORATION AND ORS.

BEFORE:

The Hon'ble JUSTICE ANIRUDDHA ROY

Date : 7th September, 2022.

Appearance:

Mr. Nirmalya Dasgupta, Adv.
Mr. Chanchal Kumar Dutt, Adv.
Ms. Krishna Mullick, Adv.
For the petitioners.

Mr. Barin Banerjee, Adv.
Mr. Fazlul Haque, Adv.
For the K.M.C.

The Court :- The writ petitioners claim to be the owner with a valid title in respect of premises No. **B/8/H/5, Ram Krishna Lane, Kolkata-700 003** (the first premises). The petitioners assail the impugned order dated July 18, 2018 passed by the fourth respondent **Annexure-P9 (at page-71)** to the writ petition whereby and whereunder the said first premises had been amalgamated with premises No. **664, Rabindra Sarani, Kolkata** (the second premises). The petitioners assert that they are not the owner of the said second premises.

Mr. Nirmalya Dasgupta, learned counsel appearing with Mr. Chanchal Kumar Dutt, learned advocate for the petitioners submits that, the said impugned order was passed in an unilateral manner without

granting any opportunity of hearing or making any representation on the facts of the case to the petitioners, before the relevant municipal authority. He submits that, the only provision is ***sub-Section 4 to Section 178 of the Kolkata Municipal Corporation Act, 1980*** (KMC Act), provides for and deals with such amalgamation of properties within the jurisdiction of the Kolkata Municipal Corporation. Referring to the said provision he submits that, there was no application filed for such amalgamation of the two properties on behalf of the petitioners. From the said impugned order it is evident that the owner of the said second premises also had not filed any such application seeking amalgamation. He further submits that, by amalgamating the said two premises by virtue of the said impugned order dated July 18, 2018, which is a non-speaking order, the substantive right of the petitioners to his property being the first premises was taken away without due process of law. Mr. Dasgupta further submits that the right, title and interest of the petitioners in respect of their property stood extinguished by virtue of such impugned and purported of amalgamation properties.

Mr. Fazlul Haque, learned counsel appearing on behalf of the Kolkata Municipal Corporation referring to paragraphs 4(a) and 4(b) from the affidavit-in-opposition submits that, the first premises had been vested with the State by virtue of operation of the provision laid down under the West Bengal Thika Tenancy Act and thereafter was leased out in favour of the Kolkata Municipal Corporation. Kolkata Municipal Corporation is, therefore, the lessee in respect of the said first premises

to which the petitioners are concerned. The lessor was the Collector, 24 Parganas (South). He submits that in such scenario the amalgamation of the said two properties was valid and lawful and the petitioners cannot claim anything to the contrary.

He also submits that the writ petition is thoroughly misconceived and should be dismissed.

After considering the rival contentions argued by the learned counsel for the parties and on perusal of the material on record, it appears to this Court that, impugned order dated July 18, 2018 (***at Page-71 of the writ petition***) is devoid of any reason. It is equally evident that no opportunity of hearing was granted to the owners of the respective premises being the said first premises and the second premises. It is also evident from the said impugned order that no application for amalgamation was filed by any of the owners of either of the properties.

On a plain reading of the provisions laid down under sub-Section 4 to Section 178 of the said KMC Act, this Court is of the considered opinion that, the moment an amalgamation takes place between two or more properties, the amalgamated property must have a singular owner and/or a common owner/owners. In the facts of this case, it is not disclosed before the petitioners how the ownership and title of the petitioners in respect of the first premises stood extinguished, if at all. Inasmuch as when an amalgamation between two or more properties takes place, it might have some civil consequences to follow. The owners

of the property must know the reasons for amalgamation and how their title stands extinguished in respect of their respective properties during such amalgamation.

From a close scrutiny of the said impugned order dated July 18, 2018, it appears to this Court that, all such factors are absent in the said impugned order as discussed above. No reason has been ascribed.

In view of the foregoing discussions and reasons the impugned order dated July 18, 2018, ***Annexure P9 (at Page-71)*** to the writ petition stands set aside and quashed.

Mr. Fazlul Haque, learned counsel for the KMC authority has confirmed that the power of the municipal commissioner as provided under Section 178(4) of the KMC Act, has been delegated in favour of the respondent no.4.

Accordingly, the respondent no.4 is directed to revisit the issue on the basis of the representations made on behalf of the petitioners dated 17th August, 2018, ***Annexure-P10 (at page-72)*** and August 24, 2018, ***Annexure-P11 (at page-75)*** to the writ petition, after giving a prior notice of hearing of at least seven days to the petitioners and Collector, 24 Parganas (South) and upon giving them an opportunity of hearing shall take a decision on the issue by a reasoned order.

The entire exercise as directed above shall be carried out by the respondent no.4 within a period of eight weeks from the date of communication of this order and the respondent no.4 then communicate its reasoned decision/order to the petitioners and the Collector, 24

Parganas (South) within a further period of two weeks from the date of such reasoned order to be passed.

It is made clear that this Court has not gone into the merits of the claims of the writ petitioners in any manner. The petitioners and the Collector, 24-Parganas (South), who will be heard by the respondent no.4 shall be at liberty to rely upon whatever documents and records, they feel to rely upon and all points shall be kept open for them to urge before the respondent no.4 on the issue.

Since there is an interim order already existing from March 18, 2020 in this writ petition, the same shall continue till two weeks after the reasoned order is communicated to the petitioners and the Collector, 24 Parganas (South).

On the above terms this writ petition, **WPO/12/2019** stands allowed, without any order as to costs.

(ANIRUDDHA ROY, J)