

WPO 1134 of 2022

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
ORIGINAL SIDE

MHER TSATURYAN
VERSUS
THE STATE OF WEST BENGAL & ORS.

BEFORE:

The Hon'ble JUSTICE SHAMPA SARKAR

Date : 5th May, 2022.

Appearance:

Mr. Surajit Nath Mitra, Sr. Adv.
Mr. Partha Pratim Roy, Adv.
Mr. Dyutiman Banerjee, Adv.
Mr. Chiranjib Sinha, Adv.
...for the petitioner.

Mr. Gopal Chandra Das, Adv.
Mr. Debangshu Mondal, Adv.
...for the KMC.

Mr. Debjit Mukherjee, Adv.
Ms. S. Chatterjee, Adv.
...for the State.

The Court: It has already been recorded in the order dated April 12, 2022 that a paper publication in respect of the pending litigation with regard to Premises No.15A, Royd Street has been made by the petitioner in 'The Anandabazar Patrika' on March 20, 2022 and 'The Times of India' on March 21, 2022. The original copies of the same have been produced before this Court which are kept on record.

The petitioner has prayed for sanction of a building plan and re-construction of the old building at Premises No. 15A, Royd Street. Admittedly, in the computer data base of the Assessment Collection Department of the Kolkata Municipal Corporation, the Premises No. 15A, Royd Street has been recorded in the name of the Official Trustee of Bengal as a Trustee of the Trust property of D A David and that the Trust was for the benefit of the Davidian Girls' School. The petitioner is the Manager of the Armenian College, Philanthropic Academy and the Davidian Girls' School.

On an earlier occasion, when the petitioner wanted to construct the building, the Official Trustee was not granting his consent. The petitioner approached this Court and thereafter the Official Trustee gave the no objection upon a direction of this Court. The Court further observed that there was no further impediment on the part of the petitioner to apply for sanction of the building plan.

In the said proceedings before this Court being AOT 1 of 2013 as well, none had come forward to make any claim in respect to the said property in question. The Court had also directed paper publication and the said publication was made in 'The Times of India' and 'Bartaman'. The Court directed that such re-construction shall be made from the own funds of the petitioner and strictly in terms of the plan to be sanctioned by the Kolkata Municipal Corporation.

The Kolkata Municipal Corporation did not take any steps to grant the sanction and, as such, the petitioner approached this Court. A writ petition being WPO no.182 of 2020 was filed. A Co-ordinate Bench of this Court disposed of the said writ petition with a direction upon the Kolkata Municipal Corporation to take a decision with regard to the prayer of the petitioner for grant of sanction in respect of the proposed re-construction.

Pursuant to the direction of this Court, the Kolkata Municipal Corporation passed an order refusing the prayer for sanction of the building plan for a B+G+IV storeyed building in Premises No.15A, Royd Street, Kolkata, on the ground that the supplementary settlement deed described the Premises as No.19, Royd Street instead of 15A, Royd Street. According to the Corporation, Premises No.19, Royd Street was a separate premises and had amalgamated with other premises.

Challenging the afore-mentioned order of rejection, the instant writ petition has been filed. In order to dispel the confusion with regard to the identity of the

premises, this Court had directed the Corporation to make an inspection of the Premises No.15A, Royd Street and Premises No.19, Royd Street. This Court had also directed that a paper publication be made incorporating the substance of the challenge in the writ petition as also the details of the proposed building to be constructed by the petitioner on Premises No.15A, Royd Street. This was done to safeguard the interest of any other third party who might make a claim in respect of the premises in question.

Substantial time has passed since the paper publication has been made, but none has also approached this Court. The report of the Corporation has been filed today, from which it appears that the Corporation has physically inspected the premises and found that three old structures exist on the Premises No.15A, Royd Street. The petitioner was found to be in occupation. The records of the Assessment Collection Department also indicate the Official Trustee of Bengal is the recorded owner who holds the property as a Trustee of the Trust of D A David.

The Official Trustee has already consented to such proposal for re-construction on the said land and such fact has been recorded in the order passed by a Co-ordinate Bench of this Court. The learned Court on an earlier occasion had also directed that the petitioner would be at liberty to make the construction upon sanction of the plan by the Kolkata Municipal Corporation. The report of the Corporation indicates that Premises No.15A, Royd Street and Premises No.19, Royd Street are different properties and Premises No.19, Royd Street has merged with Premises No.5/1, Muzaffer Ahmed Street, Kolkata along with Premises No.5/2, Muzaffer Ahmed Street, Kolkata and has been re-numbered as Premises No.5/1, Muzaffer Ahmed Street, Kolkata. This proceeding does not concern the said premises. This order is restricted to Premises No.15A, Royd Street. The contention of

the petitioner has been fortified by the data base maintained by the Assessment Collection Department of Kolkata Municipal Corporation.

Mr. S.N. Mitra, learned Senior Advocate appearing for the petitioner, submits that the number of the premises in the supplementary settlement deed had wrongly gone down. As the deed was created some time in 1926 necessary rectification cannot be made at this stage.

Under such circumstances, the sanction of the building shall be granted in accordance with law in respect of the Premises No.15A, Royd Street, Kolkata. Needless to mention that the objects of the Trust shall be followed and the reconstruction/construction to be made shall be used solely for the purpose for which the Trust was created and the interest of the beneficiaries of the trustee shall be protected. It will continue as the D A David Trust.

In view of the facts as stated above, no equity shall be claimed by the petitioner in respect of the building to be constructed. He will do all acts as the Manager of the property but the property shall be continued to be recorded in the name of the Official Trustee of Bengal as a Trustee of DA David, as per the data base of the Corporation and the sanction will also be granted accordingly.

Accordingly, WPO No.1134 of 2022 stands disposed of.

As no affidavit has been called for, the allegations against the Corporation are deemed to have been denied.

(SHAMPA SARKAR, J.)