

ORDER SHEET

WPO 2230 of 2022
IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
ORIGINAL SIDE

AMITAVA DE BHOWMICK & ANR.
VS.
KOLKATA MUNICIPAL CORPORATION & ORS.

BEFORE:

The Hon'ble JUSTICE AMRITA SINHA

Date: 29th June, 2022

Mr. Debasish Banerjee, Mr. Kushal Chatterjee, Ms. Sreetama Neogi, Mr. Supreem Naskar, Advocates for the petitioners.

Mr. Alok Kr. Ghosh, Mr. Subhrangsu Panda, Advocates for K.M.C.

Mr. Rohit Das, Mr. Preetam Majumdar, Ms. Subhasri Chatterjee, Advocates for respondent nos.10 & 11.

Mr. Debjit Mukherjee, Ms. Susmita Chatterjee, Advocates for the State.

Mr. Indradip Das, Advocate for respondent no.7.

The Court: The order dated 31st March, 2022 passed by the Executive Engineer (Civil)/Building/Borough-VI of the Kolkata Municipal Corporation is under challenge in the present writ petition.

The matter relates to the premises no. 54A, S. N. Banerjee Road, Ward No.53, Borough-VI under the jurisdiction of the Kolkata Municipal Corporation.

In terms of the order passed by the learned Single Judge of this Court on 8th September, 2020 in WPA 6419(W) of 2020 with CAN 1 of 2020 in the matter of Amitava De Bhowmick & Anr. Vs. The Kolkata Municipal Corporation & Ors. affirmed by the order passed by the Hon'ble Division Bench on 7th

February, 2022 in FMA 990 of 2021, IA No.CAN 1 of 2021 and IA No.CAN 2 of 2021 in the matter of Sri Amitava De Bhowmick & Anr. Vs. The Kolkata Municipal Corporation & Ors., the Kolkata Municipal Corporation considered the prayer of the writ petitioners herein and passed an order on 31st March, 2022.

Prior to passing the aforesaid order a reasonable opportunity of hearing was given to the parties. A spot inspection was conducted by the Kolkata Municipal Corporation. The date of the joint inspection was initially fixed on 2nd February, 2022, but as the notice of joint inspection could not be served upon the parties in proper time, accordingly a further date was fixed on 28th February, 2022.

According to the petitioners, they received the notice of joint inspection after the inspection was conducted. It appears from the documents annexed to the writ petition that after the joint inspection was conducted, a date was fixed for hearing on 11th March, 2022. The petitioners remained absent in the said hearing. After the final order was passed by the Executive Engineer of the Kolkata Municipal Corporation, the petitioners have approached this Court with the allegations that as they did not receive notice of inspection to be conducted on 28th February, 2022 in proper time, accordingly they did not appear before the Hearing Officer on 11th March, 2022. Reliance has been placed upon the representation dated 8th March, 2022 which was addressed to the Assistant Engineer (Civil) Borough-VI and the same was posted on 8th March, 2022.

The Executive Engineer considered the matter upon hearing the submission made on behalf of the private respondents and on the report of the joint inspection held on 28th February, 2022.

The impugned order mentions that as per the available office record a plan was sanctioned in respect of the aforesaid premises and on inspection it revealed that no unauthorised construction was executed and all constructions were done in compliance with the said sanctioned plan. The width of the recorded passage has been measured and the same more or less tallies with the SOR report. There was no encroachment of the common passage made by the respondents. The respondents were directed to throw the requisite strip of land as shown in the sanctioned plan within fifteen days from the date of receipt of this order.

The strip of land which was yet to be thrown upon is the portion of the land which was gifted by the respondents on the western side and the same is shown in the drawing.

According to the petitioners, there is encroachment in the common passage.

It has been submitted that the plan which was sanctioned in favour of the private respondents is a defective one.

As the impugned order was passed upon giving the parties reasonable opportunity of hearing which the petitioners failed or neglected to avail, the petitioners ought not to raise the same point here before the Writ Court. The order impugned is an appealable one. In the event the petitioners are aggrieved

by the same, the petitioners will be at liberty to apply before the appellate forum strictly in accordance with law, if so advised.

It is, however, made clear that the dispute with regard to the encroachment in the common passage and the private dispute in between the parties ought to be considered by the civil forum and not by the Kolkata Municipal Corporation.

In view of the above, no relief can be granted to the petitioners in the instant case. The petitioners may avail the opportunity of preferring appeal, if so advised.

The writ petition stands disposed of.

Postal receipt and the track report showing service of notice of inspection upon the petitioners filed in Court today be retained with the records.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties expeditiously on compliance of usual legal formalities.

(AMRITA SINHA, J.)