

OD – 2

ORDER SHEET

WPO No.2604 of 2022
IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
ORIGINAL SIDE

ASHOK KUMAR SHARMA
VS
THE KOLKATA MUNICIPAL CORPORATION AND ORS.

BEFORE:

The Hon'ble JUSTICE AMRITA SINHA

Date: 26th September, 2022.

Appearance:

Mr. Suman Dey, Adv.
..for petitioner.

Mr. Gurudas Mitra, Adv.
Mr. Jayanta Kumar Dhar, Adv.
..for KMC.

Mr. Debjit Mukherjee, Adv.
Ms. Susmita Chatterjee, Adv.
..for State.

The Court:- The petitioner is aggrieved by the act of the Kolkata Municipal Corporation in sanctioning the building plan in favour of the private respondents.

According to the petitioner, the property in question is a thika property and his father was a thika tenant. The father of the petitioner expired in the year 2006.

The legal heirs of the uncle of the petitioner have incorporated their names in the records of the Thika Controller but have fraudulently not incorporated the name of the petitioner.

Relying upon the documents of the Thika Controller, the private respondents obtained a sanctioned building plan from the Kolkata Municipal Corporation and made construction.

The petitioner claims that he came to know about the illegal activities of the private respondents in the year 2018 and thereafter, he applied before the Kolkata Thika Controller for obtaining necessary information.

The petitioner submits that the Kolkata Municipal Corporation ought to take into consideration his representation praying for cancellation of the building plan as the same was obtained by practicing fraud and misrepresentation.

From the documents annexed to the writ petition, it appears that the father of the petitioner expired on 14th October, 2006.

The Kolkata Municipal Corporation has intimated the petitioner under the Right to Information Act that plan in question was sanctioned on 24th November, 2014. The petitioner obtained the information under the Right to Information Act in the year 2021.

Whether the petitioner's name will be incorporated in the records of the Thika Controller or not is pending adjudication before the Controller, Thika Tenancy.

Kolkata Municipal Corporation acted on the basis of the documents placed before it. It is not open for the Corporation to enquire about any fraud which the petitioner claims to have been practiced for the purpose of obtaining the sanctioned plan.

In the event the petitioner is successful in establishing fraud and thereafter approaches the Corporation, then necessary steps may be taken by the Corporation.

At this stage, the Court does not find any error on the part of the Corporation in sanctioning building plan in favour of the private respondents.

It will be open for the petitioner to approach the appropriate forum to establish fraud on the part of the private respondents.

The writ petition stands disposed of.

Affidavit of service filed in Court today is taken on record.

Urgent Photostat certified copy of this, if applied for, be supplied to the parties upon compliance of all legal formalities.

(AMRITA SINHA, J.)