

OD-8

ORDER SHEET
WPO/2642/2022
IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
ORIGINAL SIDE

KALINATH DUTT
Versus
KOLKATA MUNICIPAL CORPORATION AND ORS.

BEFORE:
The Hon'ble JUSTICE AMRITA SINHA
Date : 22nd September, 2022

Appearance:

Mr. Raghunath Chakraborty, Adv.
Mr. D.Mitra, Adv.
Mr. Rajdeep Bhattacharya, Adv.
Mr. Sounak Bhattacharya, Adv.
For petitioners

Mr. Biswajit Mukherjee, Adv.
Mr. Debangshu Mondal, Adv.
For KMC
Ms. Anjusri Mukherjee, Adv.
For State
Mr. Alak Kumar Ghosh, Adv.
Mr. Gopal Chandra Das, Adv.
For respondent nos. 7 and 8.

The Court: Affidavit of service filed in Court is taken on record.

The petitioner claims to be the adjoining neighbour of the respondent nos. 7 & 8. His allegation is that the respondent nos. 7 & 8 have obtained a building sanction plan for making construction by perpetrating fraud and misrepresentation.

The specific contention of the petitioner is that extra floor area ratio has been obtained by the respondent nos. 7 & 8 relying upon false declarations showing that the said premises was occupied by tenants. The

petitioner relies upon the inspection book of the Kolkata Municipal Corporation to show that the names of the tenants are not reflected therein.

The petitioner also relies upon the Circular No. 7 of 2021-2022 dated 22nd November, 2021 of the Building Department, Kolkata Municipal Corporation.

A representation has been made before the Municipal Commissioner on 9th September, 2022 praying for cancellation of the building sanctioned plan. The petitioner alleges that the same has not been considered till date.

Learned advocate representing the respondent nos. 7 & 8 submits that the petitioner does not have the locus standi to file the writ petition.

It has been submitted that plan was sanctioned by the Kolkata Municipal Corporation upon proper verification of the documents as well as upon physical inspection of the site in question. Being satisfied by the documents placed by the private respondents, the plan has been sanctioned upon approval of the Mayor-in-Council.

It has been submitted that as the plan was sanctioned way back in 2019, the Circular of the Kolkata Municipal Corporation issued in the year 2021 will not be applicable in the present case. The allegation of fraud and misrepresentation has been vehemently denied by the private respondents.

Learned advocate representing the Kolkata Municipal Corporation submits that the plan was sanctioned upon satisfaction of all documents being placed by the concerned party.

Provision of Section 397 of the Kolkata Municipal Corporation Act, 1980 deals with the power and authority of the Municipal Commissioner to

take steps if there is any material misrepresentation or fraudulent statement given at the time of obtaining the sanctioned plan.

The representation filed by the petitioner is pending consideration at the end of the Municipal Commissioner. Without entering into the merits of the said representation, the same is referred to the Municipal Commissioner or his delegate to take a decision on the representation that has been filed by the petitioner on 9th September, 2022 strictly in accordance with law, after giving reasonable opportunity of hearing to the petitioner as well as the private respondents to produce all relevant documents in support of their claim and thereafter pass a reasoned order and communicate the same to the parties. A decision shall be taken in the matter within a period of four months from the date of communication of this order.

The learned advocate for the petitioner is directed to forward a copy of the representation dated 9th September, 2022 to the aforesaid respondents and at the time of communicating of the order of this Court.

It is, however, made clear that the Circular of the Kolkata Municipal Corporation of the year 2021 shall not be made applicable in the facts and circumstances of the present case.

The writ petition stands disposed of.

The instruction given by the Officer-in-Charge of Amherst Street Police Station dated 21st September, 2022 be retained with the records.

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

(AMRITA SINHA, J.)