

WPO/2733/2022

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
ORIGINAL SIDE

KONARK VYAPAAR LLP AND ORS.
VS
THE KOLKATA MUNICIPAL CORPORATION (KMC) AND ORS.

BEFORE:

The Hon'ble JUSTICE AMRITA SINHA

Date: 1st December, 2022.

Appearance:
Ms. Hasnuhana Chakraborty, Adv.
Ms. Atasi Sarkar, Adv.
...for the petitioner

Mr. Alak Kumar Ghosh, Adv.
Mr. Gopal Chandra Das, Adv.
...for the K.M.C.

The Court: The matter relates to Flat No.E-502 at 4 D.L. Khan Road, Kolkata under the jurisdiction of the Kolkata Municipal Corporation.

The Kolkata Municipal Corporation constructed a building under the name and style of 'Emerald Isle' comprising 33 flats at the aforesaid premises. Pursuant to the advertisement floated by the Corporation inviting applications from interested parties for purchase of flats in the said building, the petitioner no.1 applied for purchase of a flat at the said premises. The Corporation accepted the application of the petitioner and booked Flat No.E-502. The petitioner was requested to appear for joint measurement in the presence of the K.M.C. Officials.

The petitioner was thereafter requested to deposit certain amount which the petitioner did in the year 2008. The Kolkata Municipal Corporation published a list of allottees of flat at the said premises where the name of the petitioner appears against the Flat No.E-502 to be sold on free hold basis.

The name of the petitioner has since been mutated in the records of the Kolkata Municipal Corporation. Despite the mutation being made, the Corporation is yet to execute the sale deed in respect of the said flat.

The petitioner approached this Court by filing a writ petition being WPO/1935/2022 which was disposed of directing the Kolkata Municipal Corporation to consider the prayer of the petitioner in accordance with law.

In compliance of the direction passed by the Court, the Special Municipal Commissioner dealt with the matter in details and passed an order on 22nd April, 2022 mentioning that as per the present Government policy, allotment of such flat shall be on lease basis, but the said flat was allotted by the K.M.C. in favour of the petitioners on free hold basis in the year 2007. The Special Municipal Commissioner opined that the execution of the sale deed in favour of the petitioner may be considered favourably by the appropriate authority of K.M.C. The matter was placed before the authority seeking permission for execution of the sale deed in favour of the petitioner.

The order passed by the Chief Valuer and Surveyor of the Kolkata Municipal Corporation on 17th August, 2022 allegedly in compliance of the direction passed by this Court is impugned in the present writ petition.

Despite the opinion given by the Special Municipal Commissioner to consider the matter of execution of sale deed in favour of the petitioner on free hold basis, the Chief Valuer and Surveyor expressed opinion that the deed may

be executed on lease basis for a period of 99 years from the date of possession of the flat or from the date of assessment in favour of the petitioner.

The petitioners are aggrieved by the same. It has been submitted that as the flat in question was allotted on free hold basis, the Corporation, at this stage, cannot go back on the earlier terms and conditions and direct registration of the deed on lease hold basis.

Kolkata Municipal Corporation has filed a report in the form of an affidavit disclosing the Land Allotment Policy of the Government. It appears therefrom that the Land and Land Reforms Department passed an order on 26th December, 2012 publishing the Land Allotment Policy of the Government which will be applicable to land owned or held by any Department of the State Government or agency funded by the State Government. The said order does not mention that the same has been given any retrospective effect. Allotment in favour of the petitioner was made in the year 2007. The Corporation relies upon the Land Allotment Policy of the Government published in December, 2012 and intends to apply the same in favour of the petitioner.

It has been submitted that as the registration is to be made when the Land Allotment Policy is in vogue, accordingly, the Corporation will be bound by the said policy.

The Court is not agreeable with the aforesaid submissions made on behalf of the Corporation.

The flat in question was constructed and allotted in favour of the petitioners on free hold basis long before the Land Allotment Policy came into existence. The same cannot be made applicable in favour of the petitioners.

The petitioners expressed their willingness to purchase the flat on the understanding that the same will be transferred in their favour on free hold basis. The Corporation admits that the flat was allotted on free hold basis in favour of the petitioners and the same is reflected in the list of allottees prepared by the Corporation. If the title of the flat is changed from free hold to lease hold, the status of the petitioners will change from the owner to the lessee. The same will amount to the change in the initial terms and conditions of the letter of allotment which ought not to be done after nearly fifteen years of the allotment of the flat. The Corporation will be bound to act in accordance with the initial letter of allotment and apply the policy which was prevailing at the time when the allotment was made in favour of the petitioner.

In view of the above, the impugned communication made by the Chief Valuer and Surveyor of the Kolkata Municipal Corporation dated 17th August, 2022 is liable to be set aside and is, accordingly, set aside.

The Kolkata Municipal Corporation is directed to rely on the list of allottees published by the Corporation in the year 2009-2010 and register and execute the flat in question in favour of the petitioners on free hold basis.

Steps shall be taken in the matter at the earliest but positively within a period of eight weeks from the date of communication of this order.

The writ petition stands disposed of.

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

(AMRITA SINHA, J.)