

IA NO:GA/1/2022
APO/95/2022
IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
ORIGINAL SIDE

SWAPNA CHAKRABORTY & ORS
VS
THE KOLKATA MUNICIPAL CORPORATION & ORS.

BEFORE:

The Hon'ble JUSTICE ARIJIT BANERJEE

The Hon'ble JUSTICE APURBA SINHA RAY

Date : 11TH NOVEMBER, 2022.

Appearance:

Mr. Kallol Guhathakurta, Advocate
Mr.Ashis Kumar Dutta,Advocate
...for appellants/petitioners

Mr. Achintya Banerjee, Avdocate
Mr.D.Mondal,Advocate
....for KMC

Mr.Raghunath Chakraborty,Advocate
Mr. M.Ahmed,Advocate
...for private respondent .

THE COURT: By consent of the parties, the appeal and the application are taken up for hearing.

This appeal is directed against a judgement and order dated August 3, 2022, whereby the writ petition of the appellants was dismissed.

A Building Plan was sanctioned by the Kolkata Municipal Corporation (In short “KMC”) in favour of the appellants on September 10, 2013, permitting the appellants to erect a G+3 storied residential building at Premises No.138 Bandipur Road, under Ward No.113 of KMC.

A writ petition being WPA 24444(W) of 2014 was filed by the private respondent herein contending that the sanction was obtained by the appellants herein by practicing fraud and making misrepresentation and the same should be cancelled. The writ petition was disposed of by a learned single Judge by an order dated April 13, 2017, by directing the Commissioner of KMC to take a decision on the complaint lodged by the private respondent herein, in terms of Section-397 of the Kolkata Municipal Corporation Act, 1980.

The said order of the learned single Judge was carried in appeal by KMC. The Division Bench called for a report in the form of an affidavit from the concerned Block Land & Land Reforms Officer (in short “BL&LRO”) which was duly filed before the Division Bench. By an order dated November 27, 2017, the Division Bench dismissed KMC’s appeal.

Subsequently, the Commissioner of KMC took up the issue. After granting opportunity of hearing to all concerned parties, the Commissioner came to the conclusion that the sanction was obtained by the present appellants by making misrepresentation of facts. The land in question was classified as “water body” in the records maintained by the

office of the concerned BL&LRO. The Commissioner cancelled the sanctioned plan by his order dated January 10, 2018. This order was challenged before the learned single Judge in the present round of litigation.

The learned Judge recounted the history of the case and dismissed the writ petition by making the following observations:-

“Apart from the fact that the land in question has already been physically converted into ‘Bastu’ and construction have been made over the said plot of land as it emanates from the report dated 15th September, 2017 of the concerned BL & LRO nothing has been found by this Court which justifies such conversion while keeping the concerned State respondent including the office of the concerned BL & LRO in the dark.

It has been specifically reported by the concerned BL & LRO that the total area of the plot in question is 24 decimals which is classified as “Pukur” i.e. “Pond”. Such finding of the BL & LRO was fortified by the steps taken by the petitioners in 2015 by making application to the concerned authority for conversion of the said plot from “Pukur” to “Bastu’. The application of the petitioners for such conversion also corroborates the findings of the respondent No.2 to the extent that on mis-representation sanction plan was obtained from the concerned authority of the Kolkata Municipal Corporation on 10th September, 2013.

In view of the aforesaid discussion, this Court does not find any infirmity in the order passed by the respondent No.2 and the same stands confirmed resultantly the writ petition stands dismissed.”

Being aggrieved, the writ petitioners have come before us by way of this appeal. We have heard learned counsel for the appellants, KMC and the private respondent.

The plan was sanctioned on September 10, 2013. Admittedly, the appellants applied for conversion of the concerned land from “Pukur” to “Danga” in the year 2015. Therefore, in the year 2013 or prior thereto when the application for sanction of the Building Plan was made by the appellants, the land must have been classified as ‘Pukur’. Obviously, this was suppressed and the land was shown as “Danga” or “Bastu” in the application which induced the KMC authorities to accord sanction to the Building Plan.

That apart, the report of the BL & LRO that was filed before the Division Bench in the earlier round of litigation also clearly states that the total area of the land in question is classified as “Pukur’.

According to the appellants, although the land in question is classified as “Pukur’ in the land records, in fact, the land has been converted into “Danga’. We are not inclined to go into such question and the same is not necessary for the purpose of deciding this appeal. The important point is that even in 2015 the land was classified as “Pukur” in

the relevant land records. Hence, the building plan in question could not have been sanctioned. The sanctioning authority was obviously misled by misrepresentation of facts made by the appellants.

The learned single Judge has rightly not interfered with the order of the Municipal Commissioner. It is evident that the sanction of the Building Plan was obtained by the appellants by making misrepresentation of fact and by practicing fraud on the KMC authorities.

We are in complete agreement with the view of the learned single Judge. We find no reason to interfere with the order under appeal.

The appeal and the connected application are accordingly dismissed. There will, however, be no order as to costs.

Since we have not called for affidavits, allegations made in the stay application are deemed not to have been admitted by the respondents.

[ARIJIT BANERJEE, J]

[APURBA SINHA RAY, J.]