

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
ORIGINAL SIDE
(Via Video Conference)

BEFORE:

The Hon'ble Mr. Justice Ravi Krishan Kapur

W.P.O No. 992 of 2015

IA No. G.A./1/2015 (Old No. GA/3088/2015)
GA/2/2018 (Old No. GA/1540/2018)

with

W.P.O No. 990 of 2016

IA No. G.A./1/2018 (Old No. GA/1543/2018)

with

W.P.O No. 492 of 2017

IA No. G.A./1/2018 (Old No. GA/1541/2018)

ANANDLOK WELFARE ASSOCIATION & ANOTHER
-vs-
KOLKATA MUNICIPAL CORPORATION & OTHERS

For the Petitioners : Mr. Bikash Ranjan Bhattacharya, Sr. Adv.
Mr. Subrata Kumar Basu, Adv.
Mr. Siddharta Basu, Adv.
Mr. Shrijeet Biswas, Adv.
Mr. R.L Mitra, Adv.

For the Respondents : Mr. Anindya Kumar Mitra, Sr. Adv.
Mr. Sarvapriya Mukherjee, Adv.
Mr. Satadeep Bhattacharyya, Adv.
Mr. Soumya Roy Chowdhury, Adv.
Mr. Awani Kr. Roy, Adv.
Mr. Surajit Biswas, Adv.
Mr. S. Bajoria, Adv.
Mr. Pushan Majumdar, Adv.

For KMC : Mr. Biswajit Mukherjee, Adv.
Mr. Swapan Kumar Debnath, Adv.

Heard on : 18.08.2021, 07.10.2021, 09.11.2021

Judgment on : 24.02.2022

Ravi Krishan Kapur, J.:

1. All these writ petitions raise connected questions of law and fact and had been heard analogously by consent of the parties.
2. The common thread connecting all these writ petitions comprises of land measuring approximately 700 square meters situated at 227A, AJC Bose Road, Kolkata having frontage and a separate access gate from AJC Bose Road ('the premises'). The premises is separated by a 4.5 feet high brick wall from premises no.227A, AJC Bose Road which is a multistoried building named 'Anandalok' having a separate driveway and its own access. The premises has been the subject matter of diverse litigation between the parties.
3. The petitioners in all these petitions are one, Anandalok Welfare Association and its Secretary. All the members of the petitioner association are also the owners of the 72 flats comprising of the multistoried building 'Anandalok'. All the respective flats had been purchased by way of registered deeds of conveyance executed by the erstwhile promoter who was also the then owner of the entire premises.
4. In WP 492 of 2017, the petitioners have challenged a final order dated 24 May, 2011 as well as the order dated 6 April, 2017 passed by the Municipal Building Tribunal in Appeal no.83 of 2004 which relates to construction of a boundary wall. In WP 990 of 2016, the petitioners have challenged an order of mutation dated 5 July, 2016 passed by the Chief Manager Revenue (South), Kolkata Municipal Corporation with

respect to 700 square meters of land in respect of the premises. In WP 992 of 2015, the petitioners have challenged the mutation granted in respect of the premises.

5. Originally, the multistoried building “Anandlok” was constructed by one M/s Jenny Christensen S.A Ltd on a total area of 2839.273 square meters at premises no. 227 Acharya Jagadish Chandra Bose Road, Kolkata- 700020 of which the covered area utilised for construction was 1438.207 square meters and the rest of the area including the premises was left vacant, in consonance with the then extant provisions of law.
6. The petitioners allege that, the premises is an inseparable part and parcel of the original premises. The petitioners also allege the respondent No. 6 in apportioning the plot from the uncovered area i.e., the premises, has had the same mutated in the name of M/s City Enclave, and now claims a separate assessee number in respect of the premises and has thereafter has also had a building plan sanctioned by Kolkata Municipal Corporation in respect of the premises.
7. The petitioners further allege that, by an order passed by the Urban Land Ceiling Authorities, the premises had been initially kept vacant. In fact, at the time of purchase the premises was shown as a parking space for all the flat owners in a building plan which had been presented to all the members of the petitioner association. It is also alleged that the premises was shown in the map enclosed with the Deed of Conveyance executed by and between M/s Jenny Christensen

(Service Apartment) Private Limited and the respective flat owners. Subsequently, the respondent No. 5, M/s Jenny Christensen (Service Apartment) Private Limited, enclosed the premises by constructing a 125mm brick wall surrounding the premises and the premises was sold to Neelambar Caterers Private Limited by a Deed of Conveyance dated 22nd January 2001.

8. On behalf of the respondent No 6, it is submitted that, the premises was never any part or portion of the Deed of Conveyance executed between the flat owners and M/s Jenny Christensen (Service Apartment) Private Limited. It is further submitted that, subsequently, the premises has been sold to the respondent No.6 by M/s Jenny Christensen (Service Apartment) Private Limited after complying with all the necessary formalities. It is also submitted that, the petitioner association was formed by the 72 flat owners for the maintenance of the Anandlok Building and that no ownership rights were ever transferred to the Association. In this connection, reliance has also been placed on an unreported decision passed on 27 November 2019 in C.O. No 3384 of 2019.
9. On behalf of the Kolkata Municipal Corporation, it is submitted that, the order passed by the Chief Manager, Revenue which is under challenge in W.P. No 990 of 2016, is a well reasoned order. Insofar as the merits of W.P No 990 of 2016 and W.P No 992 of 2015 are concerned, the grievances of the petitioners are common. It is further submitted that, KMC does not decide the aspect of title in a mutation

proceeding, it merely identifies the person who pays the property tax in respect of a particular premises.

10. I am unable to find any enforceable right which the petitioners can claim to have in respect of the premises or any portion thereof. I find that there is no mention of the premises or any portion thereof in the Deed of Conveyance being conveyed as a car parking space to any of the flat owners of Anandlok Building. This indisputable factual position would also be borne out from the Memorandum of Association of the petitioner no.1. In *M.S. Jain Vs. State of Haryana* (AIR 1977 SC 276) it has been held that “*none can claim a mandamus without the existence of a legally enforceable right. A person can only be said to be aggrieved only when the person is denied of a legal right by someone who has a legal duty to do something or abstain from doing something*”.

11. It was also contended on behalf of the respondent no.6 that the petitioners have no locus to file these petitions. I find that by an order dated 27 November 2019, a Learned Single Judge of this Court in C.O No 3384 of 2019 had held that the petitioners had no right to file a suit, since the petitioner association was not a juristic person or a person aggrieved by any action of the respondents against it. Significantly, the Special Leave Petition preferred against the order dated 19 November, 2020 had been dismissed. I find that, even though the observations in the order dated 27 November, 2019 were tentative in nature and not binding, there is much force in this argument. The condition precedent to the grant of any relief under Article 226 is an

existence of a fundamental right of a person and the infringement of such right. The right which forms the very basis under Article 226 of the Constitution, is a personal or individual right, 12, *I.C. Bose Road Tenants' Association Vs. Collector of Howrah and Ors.* (AIR 1977 Cal 437), *Sha-San Infrastructure Pvt. Ltd Vs Thakur Corner Byabsayee Kalyan Samity & Ors.* (2010 (3) CHN 755) and *Asis Dutta & Ors. Vs State of West Bengal & Ors.* (2006 (4) CHN 311).

12. However, since the parties have been heard extensively on merits, I deal with the merits of the petition and choose not to dismiss these petitions on the ground of locus standi of the petitioners.

13. In W.P No 492 of 2017, I find that the subject matter of challenge is a final order passed by the Learned Municipal Building Corporation dated 24 May 2011 and 6 April 2017 respectively. I have also perused the impugned orders in W.P No 492 of 2017. I find that there is no reason whatsoever to interfere with the orders dated 24 May 2011 or 6 April 2017 passed by the Building Tribunal. I find that the impugned orders are reasoned orders and consider all the relevant facts and circumstances of the case. There is no illegality, irrationality nor perversity nor unreasonableness warranting any interference with the impugned orders. In the order dated 24 May 2011, it has been held that, the petitioners had failed to produce any purchase deed which would demonstrate that the premises was shown to be included in any portion of the building plan. I also find from the order of the Special Officer (Building) and the Building Tribunal dated 18.10.2003 and

24.05.2011 respectively that, the premises was specifically excluded from the sanction plan. It has been also observed in the said orders that the building plan relied on the petitioners was fabricated as the premises was at the relevant time under the control of the Urban Land Ceiling Authorities. I also do not find any procedural impropriety warranting any interference with the impugned order. Hence, I find no reason to interfere with any of the impugned orders.

14. Accordingly W.P No 992 of 2015 alongwith IA No. G.A./1/2015 (Old No. GA/3088/2015) and GA/2/2018 (Old No. GA/1540/2018), W.P No 990 of 2016 alongwith IA No. G.A./1/2018 (Old No. GA/1543/2018) and W. P No 492 of 2017 alongwith IA No. G.A./1/2018 (Old No. GA/1541/2018) are dismissed. However, there shall be no orders as to costs.

(Ravi Krishan Kapur, J.)