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ORDER SHEET
WPO No.2802 of 2022
IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
ORIGINAL SIDE

TARAK ROY

VS

THE KOLKATA MUNICIPAL CORPORATION & ORS.

BEFORE :

The Hon'ble JUSTICE AMRITA SINHA

Date: 8th December, 2022.

Appearance:

Mr. Raghunath Chakraborty, Adv.
Ms. Amrita De, Adv.
..for the Petitioner.

Mr. Ranajit Chatterjee, Adv.
Ms. Manisha Nath, Adv.
..for KMC.

Mr. Supratik Shyamal, Adv.
Ms. Sonali Sengupta, Adv.
..for Proforma Respondents.

The Court:- The grievance of the petitioner is that the representation filed by him on 22nd June, 2021 has not been disposed of in the manner as specified in the order of this Court dated 26th July, 2021 in WPO No.252 of 2021.

The Court directed the competent authority of the Kolkata Municipal Corporation to dispose of the aforesaid objection upon granting hearing to the petitioner and the private respondents. The competent authority was directed to decide the issue on the basis of the documents produced by the parties and to take a decision as to whether the building plan was rightly sanctioned or not, by passing a reasoned order.

The objection was considered by the Special Municipal Commissioner (Revenue), Kolkata Municipal Corporation and final order passed on 19th July,

2022. Special Municipal Commissioner (Revenue), Kolkata Municipal Corporation was of the opinion that the prayer of the petitioner for revocation of the sanction plan under Section 397 of the Act cannot be allowed.

Special Municipal Commissioner (Revenue), Kolkata Municipal Corporation also took note of the fact that the Kolkata Municipal Corporation granted sanction for construction of only two storied building but on physical inspection it was found that a three storied building is standing thereon. Special Municipal Commissioner (Revenue), Kolkata Municipal Corporation directed for registering separate case for unauthorized construction under Section 400(1) of the Kolkata Municipal Corporation Act, 1980.

Special Municipal Commissioner (Revenue), Kolkata Municipal Corporation passed the order upon giving a reasonable opportunity of hearing to all the parties. The said respondent perused the report placed by the Building Department as well as the Assessment-Collection Department of the Kolkata Municipal Corporation.

The petitioner failed to produce any document in support of his right, title and interest in the premises No. 54, Bagha Jatin Place, Kolkata-700 086.

Special Municipal Commissioner (Revenue), Kolkata Municipal Corporation opined that there is no misrepresentation made by the applicants while obtaining the sanction building plan.

The petitioner insists that one of the points raised by the petitioner in the objection is that the plot in question was a water body at one point of time. The

fact has not been discussed or taken into consideration at the time of disposal of the objection.

To deal with the aforesaid submission of the petitioner a report was called for from the Kolkata Municipal Corporation. The acting Assessor Collector (J.U./Br.XI) has filed the report signed on 6th December, 2022 specifically mentioning that the Assessment Collection Department along with the Environment and Heritage Department of the Kolkata Municipal Corporation jointly inspected the premises nos. 54 and 135, Bagha Jatin Place, Kolkata-700 086. It was revealed that as per available books of records and system of the Assessment Collection Department, premises no.54, Bagha Jatin Place, Kolkata-700 086 exists in the records of the Corporation since 4th quarter of 1994-95 while premises no.135, Bagha Jatin Place, Kolkata-700 086 exists since 1st quarter of 1996-97.

During physical inspection, the two premises could not be identified distinctly. It could not be ascertained whether the two premises are adjacent to or adjoining each other. Records of the Kolkata Municipal Corporation does not reveal the existence of any water body in either of the two premises and no water body was found during the physical inspection. From the aforesaid, the Kolkata Municipal Corporation is unable to hold that the water body existed in the said premises at one point of time.

As regards the two premises being adjoining to each other and plan has been sanctioned in respect of one premises relying upon the land available in the other premises, also cannot be ascertained by the Kolkata Municipal

Corporation as the premises could not be identified. The respondent authority upon perusal of all materials available on record and upon hearing the parties passed the order impugned herein.

It does not appear that the objection filed by the petitioner was not properly considered by the respondent authority.

The Special Municipal Commissioner (Revenue), Kolkata Municipal Corporation has taken into consideration all the materials required for arriving at a conclusion and ultimately rejected the prayer of the petitioner.

The Court does not find any error apparent on the face of the records calling for interference with the impugned order.

The writ petition fails and is hereby dismissed.

Report filed by the acting Assessor Collector, Assessment Collection Department, Borough-XI (J.U.), Kolkata Municipal Corporation in Court today is taken on record.

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

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(AMRITA SINHA, J.)