

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

Present:

**THE HON'BLE JUSTICE HARISH TANDON
&
THE HON'BLE JUSTICE PRASENJIT BISWAS**

**SA 64 OF 2016
SAT 215 OF 2013
CAN 1 OF 2015
(OLD NO: CAN 868 OF 2015)**

**Smt. Medini Addhya
Vs.
Commissioner of Kharagpur Municipality**

Appearance:

For the Petitioners : **Mr. Rabindranath Mahato, Adv.
Mr. Prasanta Behari Mahato, Adv.**

Judgment On : **07.07.2023**

PRASENJIT BISWAS, J.:

The instant appeal arises from a judgment and decree dated October 11, 2012 passed by the learned Additional District Judge, First Fast Track Court at Midnapore in Title Appeal No. 792 of 2011 affirming the judgment

and decree dated May 19, 2011 passed by the learned Civil Judge (Junior Division) Second Court at Midnapore in Title Suit No. 226 of 2003.

It is the case of the plaintiff/appellant that she is the owner and possessor of the case property measuring 12 decimal of land in plot No. 2112 on which her double storied dwelling house stands. She got this property by dint of registered sale deed dated 11.01.1988 and as there was mistake in the schedule of the deed, a deed of rectification was further executed by the vendor on 03.07.2003. The appellant constructed the said dwelling house after getting the plan sanctioned from the respondent authority showing 12 feet wide passage in the Southern side. As per plaintiff/appellant in the plan sanctioned by the municipality/respondent the said passage has erroneously shown as 12 feet wide instead of four feet wide and 52 feet long. The appellant submitted a prayer before the respondent authority for correction of the plan which has neither been sanctioned nor refused by the authority.

The plaintiff/appellant knocked the door of the court on apprehension that the respondent would demolish the structure and wall of her dwelling house which it cannot do as per the relevant provision of law. Our attention is drawn about Rule 45(1)(a) of the West Bengal Municipal (Building) Rules, 2007 which entails that every plot of land shall abut a means of access which may be a public street or private street or passage. Further our attention is drawn about Rule 45(2)(a) (i) of the West Bengal Municipal (Building) Rules, 2007 which provides that in case of a residential building with other occupancies, if any of less than 10% of the total floor area of the building the width of such street or passage shall not be less than 2.40 meters at any part. It is lighted from the impugned judgement that the prayer made by the appellant for rectification of the plan has neither been sanctioned nor refused. The trial court dismissed the suit and the judgement and decree of the trial court stood affirmed by the impugned order.

It was a specific stand of the defendant/respondent that the appellant herself had shown the existence of 12 feet wide road on the Southern side of the land of the appellant and municipal plan was sanctioned accordingly taking into consideration of that 12 feet wide road which was there for years altogether. This appellant with ulterior motive and malafide intention encroached 7/8 feet of that 12 feet wide road.

A point is sought to be taken before us that both the courts below erred in law in not granting decree to the effect that the defendant/respondent cannot compel this plaintiff/appellant to leave passage of more than 1.20 meter as per provision of Rule 45(2)(b) of the West Bengal Municipal Rules, 2007.

It appears to us that the appellant obtained a plan sanctioned from the defendant/respondent for construction of a single storied house on the case property showing space for road/passage on adjacent south of her land measuring 12 feet wide and 56 feet long. We have occasion to gone through the plan sanctioned by the municipal authority which also indicates that there is a 12 feet wide road just in the Southern side of adjacent land of the plaintiff. It appears to us that this appellant subsequently submitted a prayer before the respondent for rectification of the earlier sanctioned plan but the respondent neither sanctioned nor refused it but no appeal has been preferred before the appropriate authority by her against it under the relevant provision of the West Bengal Municipality Act.

We are of the view that that the plaintiff/appellant is not entitled to encroach or make construction in contravention of the plan sanctioned by the respondent authority. Moreover, it further appears from the impugned judgement under challenge that the appellant in cross-examination stated that there was no existence of road/passage in the southern side of her land rather she had left out 4 feet of land which indicates that she is trying to encroach the said 12 feet wide space of passage. The appellant gave

contradictory statements in her deposition as it appears from the impugned judgement. She stated that she had not mentioned about any 12 feet road to the southern side in the plan and that 12 feet wide road was included by the respondent municipality but it appears from the letter addressed to the municipality by the plaintiff/appellant which is marked as Exhibit 6 in the case wherein she stated that she erroneously mentioned in the plan that space for road/passage to be 12 feet wide.

It is further lighted from the impugned judgement that the plaintiff/appellant obtained sanction for construction of building on the case land showing 12 feet wide road/passage in the Southern side and is now trying to rectify the plan sparing 4 feet space for road/passage in place of 12 feet wide space in contravention of sanctioned plan which she cannot do under the provision of law.

We, thus, do not find any merit in the instant appeal nor an involvement of the substantial question of law. The appeal is dismissed.

There shall, however, be no order as to costs.

Urgent Photostat certified copies of this judgment, if applied for, be made available to the parties subject to compliance with requisite formalities.

I agree.

(Harish Tandon, J.)

(Prasenjit Biswas, J.)