

08.05.2023
Item No.13
gd/ssd

WPA/4314/2013
IA NO: CAN/2/2014(Old No:CAN/2152/2014)
AMIT BANERJEE
VS
KOLKATA MUNICIPAL CORPORATION & ORS.

Mr. Aniruddha Chatterjee,
Mr. Rahul Karmakar,
Mr. Sounak Mukherjee
..for the Petitioner.

Mr. Satyajit Talukdar
..for KMDA.

Mr. Ashok Kr. Banerjee,
Mr. Biswajit Mukherjee,
Mr. Arijit Dey
..for KMC.

1. By this public interest litigation the petitioner seeks for a direction upon the Kolkata Metropolitan Development Authority (KMDA) to remove an alleged encroachment by the 9th respondent. The matter has been lingered before this Court for several years and reports and objections have been filed from time to time which are all on record.

2. On the last hearing date there was lack of clarity as to how the passage has been shown in the layout plan which was approved by KMDA when the project was implemented.

3. Therefore, we directed an Officer of KMDA Authority who was well versed with facts of the case, to be present before this Court to assist in arriving a proper decision.

4. In terms of the direction, the Executive Engineer of KMDA is present in Court and we have interacted with him and he has also placed the original lay out approval done by KMDA at the time when the project was implemented.

5. The plan clearly shows a narrow passage lying on the Western Side of Plot No.63. At this juncture it is relevant to take note of the objections filed by the Executive Engineer of KMDA to the report submitted by the Surveyor wherein it has been stated that the factual position remains that the passage is absolutely meant for underground sewerage and electrical connection of the premises which are already in existence and are likely to be constructed belonging to the KMDA authority only and that particular sewerage line and electrical connection have got no manner of application with any member of public and as such the claim of the writ petitioner having endorsed by the Surveyor Commissioner is misconceived. Though such was the stand taken in the objection by the Executive Engineer, the factual position which emerges from the report is that there is a passage in existence and the passage is absolutely meant for underground sewerage and electrical connection. What the report purports to say is that the petitioner cannot claim any exclusive right over the said passage as the passage is meant for certain utility services to be

provided which would go to show that the passage is a common passage. The dispute is whether the 9th respondent has encroached upon in any manner into the said passage.

6. The learned advocate for the 9th respondent vehemently contends that though the 9th respondent has obtained an approved building plan, he is unable to put up construction.

7. Since the controversy as regards the existence of passage stands resolved today by virtue of the submissions made by the authority of KMDA and also the reports submitted before this Court earlier, the controversy which has been raised in the writ petition can be resolved by issuing the following direction:

We direct the Executive Engineer of KMDA and the other officials of KMDA to cause an inspection of the passage after issuing notice to the writ petitioner as well as the 9th respondent and any other person who is likely to be interested in the matter and during the inspection measurement shall be taken and clearly the passage shall be demarcated by placing survey stones and painting them with bright colours and after such demarcation, it is open to the 9th respondent to approach the authorities for necessary permission to put up

construction in the land owned by the 9th respondent.

8. The above direction be complied with after the inspection by the officials of KMDA if any encroachment has been made by the writ petitioner or by the 9th respondent or by any third party in the said passage, the same should be removed by the authorities.

9. The above direction shall be complied with within a period of four weeks from the date of receipt of server copy of this order.

10. With the above observation, the writ petition stands disposed of.

(T. S. SIVAGNANAM)
ACTING CHIEF JUSTICE

(HIRANMAY BHATTACHARYYA, J.)