

Item No.10

In The High Court At Calcutta
Constitutional Writ Jurisdiction
Appellate Side

05.04.2023
Ct-24

WPA 6128 of 2023
Dr. Archana Majumdar
v.
Kolkata Municipal Corporation & Ors.

Mr. Subir Sanyal
Mr. Ratul Biswas
Mr. Kaushik Chowdhury
Ms. Sumouli Sarkar
... for the petitioner.

Mr. Aniruddha Chatterjee
Mr. Abir Lal Chakraborty
Mr. Pran Gopal Ganguly
Mr. Shuvojeet Gupta
... for the respondent nos. 9.10.11

Mr. Malay Singh
Ms. Neelam Singh
... for the State.

Mr. Alak Kumar Ghosh
Mr. Subhrangsu Panda
... for KMC.

The grievance of the petitioner is that plan has been obtained by the private respondents by practicing fraud and misrepresentation upon the Kolkata Municipal Corporation by not properly disclosing the area of the common passage.

The petitioner contends that the area of the common passage has been shown to be the private land of the private respondents for obtaining sanction for making construction. If only the private land of the petitioner is taken into consideration, then the plan could have been sanctioned only upto the second floor

level. Because of adding the area of the common passage, the plan has been sanctioned for construction of G+3 storied building.

It has been contended that it is the duty of the Corporation to verify the mother deed along with the subsequent Deed of Conveyance to ascertain the exact quantum of land prior to sanction of the building plan. The Corporation, without verifying the proper documents, sanctioned plan in favour of the private respondents for construction of G+3 storied building.

Prayer has been made for invoking the provision of Section 397 of the Kolkata Municipal Corporation Act for cancellation of the sanctioned plan.

It has been admitted that a civil suit seeking declaration and mandatory injunction in respect of the common passage has been filed by the private respondents being TS No. 63 of 2023 before the learned Civil Court.

Learned advocate representing the private respondents submits, upon instruction that, an order has been passed in the said Title Suit on March 9, 2023 directing both the plaintiffs and the defendants in the Suit to maintain status quo over the suit property as mentioned in Schedule 'A' and 'B' of the plaint in respect of the nature, character and possession of the same.

It has been denied by the private respondents that the space for common passage has been shown for obtaining the sanctioned plan.

It has been contended that construction has been raised in accordance with the plan sanctioned by the Corporation.

It appears from the submissions made on behalf of all the parties that a Title Suit is pending consideration in connection with the common passage. At this stage it will not be proper to direct the Kolkata Municipal Corporation to decide as to whether the said common passage was relied upon for obtaining sanction by the private respondents.

It is for the civil Court to decide the title of the passage in question. If ultimately the petitioner is able to obtain order from the competent Court of law declaring the passage in question to be common and if thereafter it transpires that the said area has been shown for obtaining the sanctioned plan for raising construction, then the Corporation can take a decision in the matter. Prior thereto it will not be possible for the Corporation to decide as regards the title of the private parties qua the common passage.

The petitioner prays for a direction restraining the private parties to hand over/transfer possession of the portion constructed on the 3rd floor of the subject premises.

The private respondents contend that they have made construction on the basis of a sanctioned plan. If it is subsequently held that the sanction was obtained by practicing fraud and misrepresentation, then the private respondents will be at risk as regards the construction made on the 3rd floor of the subject premises. No restraint order is required to be passed at this stage.

The writ petition stands disposed of.

Report filed by the Officer-in-Charge, Beliaghata Police Station signed on April 4, 2023 be retained with the records.

Urgent certified photocopy of this order, if applied for, be supplied to the parties expeditiously on compliance of usual legal formalities.

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(Amrita Sinha, J.)