

16
28.06.2023
d.p.

**In The High Court At Calcutta
Constitutional Writ Jurisdiction
Appellate Side**

**W.P.A 7103 of 2023
With
W.P.A. 12082 of 2023**

**Anil Kumar Verma
-versus
The Kolkata Municipal Corporation & Ors.**

**Mr. Sanjoy Bose,
Mr. Priyankar Basu Mallick.
...For the Petitioner.**

**Mr. Gopal Chandra Das,
Mr. Dwijadas Chakraborty.
...For KMC.**

**Mr. Ranjan Saha.
...For the State.**

Affidavit-of-service filed in Court today is taken on record.

None appears on behalf of the private respondent in spite of service.

Both the writ petitions are taken up analogously.

The petitioner claims to be the owner of premises no. 81/1A, Sarat Bose Road, Kolkata-700026 adjacent to the premises no. 83, Sarat Bose Road, Ward No.72, Borough-VIII under the jurisdiction of the Kolkata Municipal Corporation.

The allegation of the petitioner is that the private respondent no. 5 obtained a building sanction plan from the Corporation upon misrepresentation and fraud.

The plan which was sanctioned in favour of the private respondent for making construction was on the basis of incorrect information supplied to the Corporation.

The petitioner filed application under Section 397 of the Kolkata Municipal Corporation Act, 1980 seeking cancellation of the building plan. The said objection was filed in November, 2022 and is pending till date.

The petitioner noticed that the private respondent started making construction on the basis of the said plan and accordingly filed another objection before the respondent authority specifically mentioning that the construction is being made by encroaching the lane of the Kolkata Municipal Corporation that was being used by all the passerby in the area. The said objection was filed in May 2023 and the same is pending consideration till date.

Learned advocate appearing for the Kolkata Municipal Corporation has obtained instruction wherefrom it does not appear that the objection filed by the petitioner has been heard or disposed of.

The instruction mentions that the plot in question where the construction is being made abuts the Corporation road of width 17.08 mtr. in the East which is the means of access of the premises.

There is another narrower KMC dead end passage on the North which has a width varying from 2.895 mtr. to 2.1333 mtr. The said passage serves three premises.

The Court is of the opinion that for effective adjudication of the dispute, a spot inspection is required to be conducted to ascertain as to whether the KMC lane/passage has been encroached upon for making construction by the private respondent.

In view of the above, the concerned Executive Engineer is directed to cause a spot inspection upon prior notice to all the necessary parties including the petitioner, the private respondent, the occupiers of the premises who are using the alleged passage and thereafter take a decision as to whether there has been any misrepresentation by the private respondent at the time of obtaining sanction of the building plan.

The spot inspection report shall be served upon all the necessary parties and an opportunity of hearing shall be given to all the necessary parties and thereafter a decision shall be taken in the matter.

In the event it appears that there has been any misrepresentation at the time of obtaining permission, then necessary consequential steps shall be taken to redress the same.

A decision shall be arrived at the earliest, but positively within a period of twelve weeks from the date of communication of a copy of this order.

Both the writ petitions stand disposed of.

The instruction forwarded by the engineers of the Corporation is taken on record.

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

(Amrita Sinha, J.)