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11.10.2023
A.G.M.

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

**W.P.A 13118 of 2023
With
IA No : CAN 1 of 2023**

**M/s. Sumiyya Construction
-Vs-
The Kolkata Municipal Corporation & Ors**

**Mr. Abbas Ibrahim Khan
Ms. Meena Shabnam
...For the Petitioner.**

**Mr. Srijan Nayak
Ms. Rituparna Maitra
... For the K.M.C.**

**Mr. Debjit Mukherjee
... For the State.**

The petitioner claims to have entered into a development agreement for developing the premises no. 15, Damzen Lane, P.S. Bowbazar, Ward No. 43, Borough-V, Kolkata-700 073.

According to the petitioner, the property in question is a huge one with dilapidated structure standing thereon.

The petitioner seeks for a direction upon the Kolkata Municipal Corporation to demolish the property so that the petitioner may be able to reconstruct the same in accordance with the plan sanctioned by the Corporation.

For reasons best known to the petitioner the owner of the subject property with whom the petitioner allegedly entered into the development agreement has not been impleaded as party in the writ petition.

The petitioner submits that the private respondent no. 7 is a co-owner of the subject property.

The Court has not been made aware as to whether there is any other owner, occupier or tenant in the subject property. There is no averment as to whether the property is encumbered or not.

Apart from the submission that the property is in a ruinous condition and the same is required to be demolished at the instance of the Corporation, no further submission has been made.

The submission of the petitioner is that the property in question is located in a very congested area and it will be difficult for the petitioner to demolish the existing structure.

On a perusal of the writ petition it appears that a notice under Section 411(1) of the KMC Act, 1980 was issued by the Corporation in favour of one Ajijuddin and Nayeemuddin & Ors. on 18th June, 2014. The development agreement relied upon by the petitioner was alleged executed in March, 2017.

It appears from the submissions made on behalf of the petitioner that the petitioner intends to thrust upon the Corporation the responsibility of demolishing the dilapidated structure so that it will be possible for the petitioner to raise construction thereon.

As it appears that the petitioner intends to develop the property, then it is for the petitioner to take steps for demolition of the same and not pray before the Corporation to demolish and thereafter hand over the said premises to the petitioner for developing the same.

The Court is not convinced with the submission of the petitioner that the petitioner will be in a position to develop the property. If the Company intends to develop the property then the Company ought to shoulder the responsibility of demolishing the same and not approach the Corporation to come its aid to make the property in a manner appropriate for development.

The writ petition appears to have been filed with an absolute mala fide motive. The same suffers from non-joinder of necessary parties and non-disclosure of relevant vital facts.

The same is liable to be dismissed and is hereby dismissed with costs assessed at Rs. 25,000/- (rupees twenty five thousand only) to paid by the petitioner in the office of the High Court Legal Services Committee by 18th October, 2023.

List on 19th October, 2023 to ascertain as to whether costs have been deposited or not.

The connected application also stands dismissed.

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

(Amrita Sinha, J.)