

Item No.242

In The High Court At Calcutta
Constitutional Writ Jurisdiction
Appellate Side

27.09.2023
Ct-24
AGM

WPA 18690 of 2023
Amal Kumar Koyal
versus.
The State of West Bengal & Ors.

Mr. Ashok Banerjee, Sr. Adv.
Mr. Subhashis Ghosh
Ms. Salma Sultana
...For the petitioner.

Mr. Debanik Banerjee
Mr. Steven S. Biswas
Mr. Sourav Bar
Mr. Mashrooma Shaikh
...For the respondent no. 6.

Mr. Srijan Nayak
Ms. Rituparna Maitra
... For the Kolkata Municipal Corporation.

The petitioner seeks cancellation and revocation of the building sanctioned plan issued in favour of the private respondent no. 6 on the ground that the plan could not have been sanctioned by the Corporation over an undivided property.

Learned advocate representing the private respondent denies the contention of the petitioner.

It has been submitted that the property in question is the private property of the respondent no. 6.

The petitioner is not the co-owner of the subject property.

The sale deed of the private respondent is not under challenge by any party before any forum. The schedule of the property as appearing in the deed of the private respondent is different from the schedule of the property mentioned in the deed of the petitioner.

Learned advocate representing the Corporation relies upon instruction forwarded by the engineers of the Corporation wherein it has been mentioned that a building plan has been sanctioned in the year 2022 for construction of G+3 storied building.

The engineers of the Corporation scrutinized the documents and also inspected the site recently wherefrom it revealed that the construction has gone up to the first floor level as per the plan sanctioned. No unauthorized construction was detected.

Upon hearing the submission made on behalf of all the parties, it appears that construction in question is being carried on by the private respondent no. 6 in accordance with law with the plan sanctioned by the Corporation.

The petitioner seeks cancellation of the sanctioned plan.

In the absence of documents in support of the claim of the petitioner that the property in question is a joint property, the Corporation will not be in a position to cancel the plan already sanctioned in favour of the private respondent. The Corporation already scrutinized the documents and have found that the private

respondent does have ownership over the land where the plan has been sanctioned.

The submission of the petitioner that the property is a joint property has been seriously disputed by the private respondent. Such disputed question of facts cannot be adjudicated by the Writ Court.

It will be open for the petitioner to approach the appropriate forum for declaration of rights.

In the event, the petitioner obtains an order from the competent forum declaring that the property where the plan has been sanctioned is a joint property, then the Corporation shall be bound to take into account the said fact and take necessary consequential steps in the matter.

At this stage, it would not be proper to pass any direction upon the Corporation for cancelling the plan already sanctioned in favour of the private respondent.

The writ petition fails and is hereby 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.)