

04. 04.05.2023
Ct.15

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WPA 24131 of 2013

Ms. Mira Chaudhuri & Ors.

-vs-

Kolkata Municipal Corporation & Ors.

Mr. Alak Kumar Ghosh

Mr. Tanmoy Sett

Mr. Pran Gopal Das ... for the Petitioners

Ms. Sima Chakraborty ... for the KMC.

Matter relates to installation of stand post vis-a-vis shifting of such stand post which is installed in front of premises no. 47B, Turf Road, Kolkata. In the writ petition, inter alia, petitioner has prayed for shifting of stand post/hydrant from its present place to a different place.

However, Mr. Ghosh, learned advocate representing the petitioners submits that in view of Section 236 of the Kolkata Municipal Corporation Act, 1980 (for short "Act of 1980"), said stand post which is installed in front of the premises of the petitioners is not required since mostly the water supplied through the said stand post is utilised by the people residing in the slums in adjoining areas. Placing reliance on the provisions as contained under section 236 of the Act of 1980 it has also been contended on behalf of the petitioners that provisions are there to supply wholesome water either in pipes or by sinking tubewells or otherwise to huts and bustees for domestic purposes of the occupants; therefore, there is no necessity of such stand post being installed in front of the premises of the petitioners.

Another limb of submission which has been made on behalf of the petitioners is non-compliance of the formalities as contemplated under section 237 of the Act of 1980 which envisages approval of Mayor-in-Council of Kolkata Municipal Corporation prior to installation of stand post /hydrant within the area under KMC.

According to the petitioners there might have been approval of Mayor-in-Council at the time of installation of the said stand post but while shifting the stand post from its original position to the present site which is also in front of the premises of the petitioners such approval of Mayor-in-Council under section 237 has not been obtained. Therefore, Kolkata Municipal Corporation is under obligation to remove such stand post on the plea of violation of the formalities as required under relevant provisions.

Kolkata Municipal Corporation is represented by learned advocate and report dated 27th March, 2023 has been filed by Director General, Water Supply Department, Kolkata Municipal Corporation, pursuant to the order passed by this Court dated 23rd February, 2023. The reason behind directing the KMC to furnish report was exploring the possibility of shifting the said stand post from its present position to the middle of adjacent municipal pathway which is located in between 47B, Turf Road and 38, Turf Road.

The Court was preliminary of the view that if the stand post is shifted to the middle of the adjacent

KMC pathway it will not be in front of the premises of any person including 47B, Turf Road, Kolkata, and at the same time said stand post would cater the need of local inhabitants. However, on perusing report dated 27th March, 2023 furnished by the Director General, Water Supply Department, Kolkata Municipal Corporation, it appears that this pathway provides passage to the inhabitants of 14 premises situate on either side of the said pathway and the said pathway leading towards adjoining slum areas. Slum dwellers also use this pathway in various ways.

Having considered this aspect which has been reflected in the report dated 27th March, 2023 it appears to this Court that shifting of stand post from its present position to the middle of adjacent pathway is not feasible. Therefore, it appears to this Court that giving direction upon the concerned authority of KMC to take steps for shifting of the said stand post to the nearby pathway needs to be renounced.

Today, during course of hearing this Court has found that one application was made by the original petitioner (since deceased) dated 2nd June, 2012 requesting the Chief Minister, Government of West Bengal, to shift the stand post from its present position which is in front of premises no. 47B, Turf Road, Kolkata. Prayer is also made in the present writ petition as pointed out in the preceding paragraph to shift the stand post from its present location. In view of such stand as it has been expressed from the letter of the original petitioner dated 2nd June, 2012 at page 53 of the writ petition as well as prayer (a) this Court finds that there is no necessity to consider the case

attempted to have been made by which petitioners have sought for permanent removal of stand post placing reliance on section 236 of the Act of 1980 without shifting the same to some other place on the plea that section 236 contemplates supply of wholesome water to the slum dwellers by different means.

Accordingly, Court is required to consider the prayer of the petitioners for shifting of the said stand post if it is permissible within the four corners of the statute. It has been apprised by the parties to this writ petition that initially stand post situated in front of the garage space of the house of the petitioners but on request being made by the petitioners it has been shifted towards the entrance of 47B, Turf Road, Kolkata, which is causing nuisance to the family members of the original petitioner (since deceased). It has been argued on behalf of the petitioners before this Court today that the petitioners are not certain with regard to compliance of provisions under section 237 of the Act of 1980 to the extent of granting prior approval by the Mayor-in-Council before installation of said stand post but according to the petitioners there is non-compliance to that extent while shifting the stand post from its original position to its present position on the request being made by the petitioners.

According to the petitioners at the time of shifting of the said stand post even on the request of the original petitioner (since deceased) application of section 237 by way of according prior approval of Mayor-in-Council is necessary.

Having considered these aspects this Court disposes of this writ petition by directing the Director General, Water Supply Department, Kolkata Municipal Corporation, being the respondent no.7 to take decision by consulting the records and if necessary by making inspection on visiting the site where the stand post situates whether at the time of installation of the said stand post under section 237 (1) approval of Mayor-in-Council was obtained or not and whether it is necessary to obtain such approval at the time of shifting of such stand post on the request of the petitioners as it was done subsequently. Such decision is to be taken within a period of eight weeks from the date of communication of this order after granting opportunity of hearing to the petitioners or their representative. The decision to be taken by the respondent no.7 shall be communicated to the petitioners within one week thereafter.

However, it is made clear that if it is found by the respondent no.7 while taking decision that at the time of installation of stand post prior approval of Mayor-in-Council which has been contemplated under section 237(1) has not been accorded; respondent no.7 shall take necessary steps in accordance with law.

The exception to the report dated 27th March, 2023 filed on behalf of petitioners today is taken on record.

However, there shall be no order as to costs.

Urgent photostat certified copy of the order, if applied for, be given to the parties, upon usual undertakings.

(Saugata Bhattacharyya, J.)