

OD-6

ORDER SHEET
WPO No.363 of 2023
IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
ORIGINAL SIDE

MALATI SAHA & ANR.
-Versus-
KOLKATA MUNICIPAL CORPORATION & ORS.

BEFORE:
The Hon'ble JUSTICE AMRITA SINHA
Date:20th September, 2023.

Appearance:
Mr. Ranajit Chatterjee, Adv.
Mr. Dipak Ranjan Mukherjee, Adv.
Mr. Arijit Dey, Adv.
...for Petitioners.

Mr. Alak Kr. Ghosh, Adv.
Mr. Gopal Chandra Das, Adv.
...for KMC.

Mr. Satyajit Talukdar, Adv.
Mr. Avishek Guha, Adv.
Ms. Akansha Chopra, Adv.
...for KMDA.

Ms. Urmila Chakraborty, Adv.
Mr. Ram Nath Dutta, Adv.
...for Respondent No.6.

The Court:-The instant writ petition has been filed seeking for issuance of writ of Mandamus commanding the respondent authority to take steps to remove the illegal encroachment and restoring the corridor to its original position as shown in the KMDA approved plan.

Affidavits have been filed by the parties.

Report of the KMDA mentions that the shops in question being shop nos. F-47, F-48 and F-49 in the first floor of the CIT complex, namely, Dakshinapan Shopping Complex was originally allotted to one U.P. State Brassware Corporation Ltd. sometime in the year 1986. The aforesaid U.P. State Brassware Corporation Ltd. stood liquidated and was taken over by U.P. Export Corporation Ltd. which is running the business since May, 1994. There was a corridor space/passage measuring 16 sq. meter between the shop rooms F-47 and F-48.

The allottees prayed before the authority to permit them to enjoy the said corridor space for security reasons since the shop rooms were located at the extreme corner of the said passage.

The Land and Flat Allotment Committee of the erstwhile KIT, KMDA adopted a resolution in the meeting held on 06.05.1995 to allow U.P. Export Corporation Ltd. the corridor space without hampering ventilation and lighting subject to certain payment being made.

It transpires that the payment was not made as per the demand raised by the authority.

Pursuant to the order passed by the Court in the instant writ petition a joint inspection at the spot was conducted by KMDA in presence of the officials of the Kolkata Municipal Corporation. It was noticed that 3 ft. height railing on the southern side existed and the railing has a grill covered guard horizontally upto the ceiling. There is a perforated rolling shutter and there are covers installed with some furniture.

KMDA is yet to take a decision whether to permit U.P. State Brassware Corporation Ltd. to use the said space or not.

According to the Kolkata Municipal Corporation, there is hardly any unauthorized construction.

Learned advocate representing the U.P. Handicrafts Development and Marketing Corporation Ltd. who is presently occupying and using the disputed portion submits, upon instruction that, repeated prayers were made before KMDA seeking waiver of the annual permit fee but the same is pending consideration.

On a perusal of the report filed by KMDA it appears that there is no mention about any unauthorized construction at the subject premises.

It appears that the petitioners are aggrieved by the act of the respondent authorities in permitting the private respondent to enjoy the corridor space and seeks removal of the encroachment. Allegation that the Building Rules have been violated does not appear to be proper.

Dispute regarding encroachment and its regularization ought to be resolved before the competent forum. High Court sitting in the writ jurisdiction is not the competent authority to decide upon encroachment.

In view of the above, no relief can be granted to the petitioners in the instant writ petition. Writ petition fails and is hereby dismissed.

It will be open for the petitioners to seek remedy before the appropriate forum in accordance with law, if so advised.

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

(AMRITA SINHA, J.)