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ORDER SHEET

WPO No.707 of 2023
IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
ORIGINAL SIDE

PURVI FINANCE COMPANY PRIVATE LIMITED & ANR
VS.
KOLKATA MUNICIPAL CORPORATION & ORS.

BEFORE:

The Hon'ble JUSTICE AMRITA SINHA

Date: 27th March, 2023.

Mr. Sourav Kumar Mukherjee, Ms. Falguni Jana,
Advocates for the Petitioners.

Mr. Gopal Chandra Das, Advocate for KMC.

Mr. Soumya Mazumdar, Mr. Om Narayan Rai,
Mr. Bahal Singh, Mr. S. P. Tiwari, Advocates
for the Respondent Nos. 5.

Mr Sushovon Dey, Advocate for the Respondent Nos.7 to 14.

Mr Millan Kr. Maity, Mr. Debjit Mukherjee,
Mrs. S. Chatterjee, Advocates for the State.

The Court:-The matter relates to the construction on the roof of the premises situated at P-12, Kalakar Street, Ward No.23, Posta Police Station, Kolkata-700007.

The petitioner is the owner and occupier of a portion in the first floor of the subject premises. The petitioner has annexed the sale deed of the subject premises to show that the petitioner has the roof right on the fourth floor of the said building.

The allegation of the petitioner is that the respondent no.5 is making construction on the roof. The petitioner, however, submits that the said construction is being made pursuant to a sanction granted by the Kolkata Municipal Corporation. The petitioner submits that the Kolkata Municipal Corporation ought not to have sanctioned the plan as the private respondent does not have exclusive right over the roof. The Kolkata Municipal Corporation ought not to have sanctioned the plan without granting any opportunity of hearing to the petitioner.

Reference has been made to Rule 4(3) of the Kolkata Municipal Corporation Building Rules which mentions that the notice of construction shall be accompanied by the copies of the documents showing that the applicant has the exclusive right to erect, re-erect or alter any building or portion thereof upon the land.

It has been stressed that the private respondent does not have any exclusive right to erect construction over the roof and, accordingly, sanction granted in favour of the private respondent is bad in law.

Learned advocate representing the respondent no.5 submits, upon instruction that, construction is being made in accordance with the plan sanctioned by the Corporation. The petitioner has admitted in the writ petition that the private respondent has right to make pucca construction over the roof and the same will also be evident from the deed of the private respondent annexed to the writ petition. The schedule of the property purchased by the private respondent mentions about the entire open roof covered by tin shed with right to make pucca construction over the said roof. Private respondent exercised its right and obtained sanction from the Corporation for raising construction thereon.

It appears from the submissions made on behalf of the petitioners and from the averments made in the writ petition that the petitioners have been advised to institute appropriate proceeding seeking cancellation of the deed of conveyance of the private respondent.

As it appears that the construction is being made by way of sanctioned plan which was granted in favour of the private respondent in accordance with the terms and conditions mentioned in the deed of conveyance, accordingly, it will not be proper to relegate the matter to the Corporation for adjudication, at this stage.

In the event, the petitioners are able to obtain any order setting aside the deed of conveyance of the private respondent, then it will be open for the petitioners to approach the Corporation for necessary relief. No further order need be passed in the present writ petition.

The Kolkata Municipal Corporation is represented by the learned advocate.

Report filed by the Officer-in-Charge, Posta Police Station be retained with the records.

The writ petition stands disposed of.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties upon compliance of all legal formalities.

(AMRITA SINHA, J.)