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ORDER SHEET
WPO No.1214 of 2023
IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
ORIGINAL SIDE

SMT. MANDIRA PAUL & ANR.
-Versus-
THE KOLKATA MUNICIPAL CORPORATION & ORS.

BEFORE:
The Hon'ble JUSTICE AMRITA SINHA
Date:12th June, 2023.

Appearance:

Mr. Arindam Banerjee, Adv.
Ms. Sinthia Bala, Adv.
Mr. Tanmoy Kumar Dey, Adv.
Ms. Nayonika Chakraborty, Adv.
...for Petitioners.

Mr. Srijan Nayak, Adv.
Ms. Manisha Nath, Adv.
...for KMC.

Mr. Suddhasatva Banerjee, Adv.
Mr. Saunak Sengupta, Adv.
Mr. Arnab Dutt, Adv.
..for Respondent Nos.15 & 17.

Mr. Sourav Banerjee, Adv.
Ms. Labani Dey, Adv.
..for Respondent Nos.18 & 19.

Mrs. Jayeeta Sinha, Adv.
..for the State.

The Court:- The matter relates to certain construction being made in the premises no.73A, Vivekananda Road, Kolkata-700006. The aforesaid premises is presently an amalgamated one of the premises nos. 73A and 73B, Vivekananda Road, Kolkata-700006.

According to the petitioners, the amalgamation was made upon fraud and misrepresentation. The petitioners claim to be the owners of the adjacent premises. The petitioners are aggrieved by the construction being raised over the amalgamated premises.

Specific contention is that side open spaces which are mandatorily required to be kept vacant have been infringed at the time of making construction. The petitioners claim to have filed objection before the

Kolkata Municipal Corporation and allege that the same has not been taken up for consideration till date.

Learned advocate representing the private respondents submits, upon instructions that, the developer of the subject construction and the owners of both the premises produced proper documents before the relevant authority for obtaining the order of amalgamation and the construction in question is being made strictly on the basis of the plan sanctioned by the Kolkata Municipal Corporation.

An objection has also been raised by the learned advocate representing the private respondents as regards the locus standi of the petitioners qua the allegation of illegal amalgamation of the premises in question. The private respondents do not oppose the amalgamation.

Learned advocate representing the Kolkata Municipal Corporation is not ready with proper instruction in the matter.

Learned advocate representing the State respondents has obtained instruction from Girish Park Police Station. Report dated 12.06.2023 filed by the Officer-in-Charge of Girish Park Police Station is taken on record.

Submission of the petitioners that the amalgamation was made by practicing fraud and misrepresentation does not appeal to the Court. None of the owners of the subject properties which stood amalgamated raised any objection. The private parties submit before this Court that they have produced necessary documents before the Corporation seeking permission for amalgamation and on the basis of the said documents the premises in question being 73A and 73B stood amalgamated as premises no. 73A, Vivekananda Road, Kolkata-700006.

The petitioners being third parties to the premises which stood amalgamated ought not to stand in the way of amalgamation and the petitioners do not have any right to question the amalgamation which took place.

The petitioners may, however, raise issue with regard to the construction in question if the same is being made contrary to the plan sanctioned by the Corporation.

The private respondents assert that the construction is being made in accordance with the sanctioned plan.

As it appears that an objection has been filed before the Kolkata Municipal Corporation, inter alia alleging unauthorized construction, accordingly, the Court thinks it fit to direct the Executive Engineer (Civil)/ Building Department, Borough-IV to consider the objection filed on behalf of the petitioners (copy of the objection dated 04.04.2023 has not been annexed to the writ petition) in accordance with law and dispose of the same after giving reasonable opportunity of hearing to all the necessary parties. If required, a spot inspection shall be conducted by the aforesaid respondent to ascertain the allegations of unauthorized construction.

The aforesaid respondent shall pass a reasoned order positively within a period of twelve weeks from the date of the communication of the order and communicate the same to the parties immediately thereafter.

It is made clear that the aforesaid respondent will restrict the consideration of the objection only with regard to the unauthorized construction and will not enter into or decide any other issue including amalgamation or any other private disputes between the parties.

Be it recorded that the Court has not entered into the merits of the objection filed by the petitioners and all points including the issue as to whether the construction is being made in accordance with the Kolkata Municipal Corporation Act and the corresponding Building Rules are left open to be decided by the aforesaid respondent at the time of consideration of the objection of the petitioners.

Learned advocate for the petitioners is directed to forward a copy of the objection dated 04.04.2023 to the aforesaid respondent at the time of communicating the order of the Court.

Writ petition stands disposed of.

Affidavit of service filed in Court today is taken on record.

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

(AMRITA SINHA, J.)

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