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IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
ORIGINAL SIDE

WPO/1460/2023
IA NO.GA/1/2023, GA/2/2023

MS. SARITA RATHI AND ORS.
VS
KOLKATA MUNICIPAL CORPORATION AND ORS.

BEFORE :
THE HON'BLE JUSTICE AMRITA SINHA
Date : 16th November, 2023

Appearance :

Mr.Sagar Bandopadhyaya, Adv.
Mr.Rudraman Bhattacharya, Adv.
Mr.Lalit Baid, Adv.
Mr.Ratul Das, Adv.
Ms. Tamoghna Saha, Adv.
Ms.Aparupa Ghosal, Adv.
..for the petitioner.

Mr.Wasim Ahmed, Adv.
Mr.S Shehabuddin, Adv.
...for the State.

Mr. Alak Kumar Ghosh, Adv.
Mr.Dilip Kumar Chatterjee, Adv.
...for the KMC.

Mr. Shyamal Sarkar, Sr. Adv.
Mr.Reetobroto Kumar Mitra, Adv.
Mr.Sankarsan Sarkar, Adv.
Mr.Aditya Kanodia, Adv.
Ms. P. Bharara, Adv.
Mr.S. Banjeree, Adv.
...for the respondent no.9.

The Court : The petitioners allege illegal and unauthorised construction at the premises no. 5A/1C, Lord Sinha Road, Kolkata – 700 071, Borough – VII, Kolkata Municipal Corporation. A representation highlighting the alleged illegalities/irregularities at the time of making

construction/regularisation was submitted before the Corporation. The same is alleged to be kept pending.

Learned Senior Counsel representing the respondent no.9, being the developer of the said property, raises an issue of demurrer. It has been submitted that the writ petition is liable to be dismissed on the ground of availability of alternative remedy, suppression of material facts, private dispute in between the parties and on account of disputed question of facts.

It has been submitted that the issues raised in the writ petition relates to the petitioners as well as the developer and the same are private in nature. The petitioners have already approached the Real Estate Regulatory Authority [in short, RERA] seeking similar relief as sought for in the writ petition and the said fact has been suppressed in the instant writ petition.

The common areas which the petitioners' claim are not in accordance with the terms and conditions of the development agreement entered in between the parties and the subsequent plan which was accepted by the Corporation relying upon which the Completion Certificate was issued.

Learned Advocate representing the Corporation has relied upon a report prepared by the Executive Engineer/Building/Borough-VII dated 12th September, 2023 which mentions about several additions/ alterations/ deviations to the main plan. Copy of the report has been circulated amongst the parties. The petitioners and the private respondent both have taken exception to the report filed by the Corporation.

Since the issue of demurrer has been raised, the Court intends to deal with the same at the very beginning.

The submission that there is a private dispute in between the parties cannot be accepted. The petitioners have alleged illegal/unauthorised construction. Kolkata Municipal Corporation, the plan sanctioning authority, has the right and the power to look into the issue of unauthorised construction. The allegation of unauthorised construction cannot be brushed aside or left unattended on the submission that the same is a private dispute in between the parties. It is the duty of the Corporation to take steps against any unauthorised construction, if detected.

As regards the submission of availability of alternative remedy and the submission that the writ petition be dismissed as the petitioners have approached RERA for similar relief also cannot be accepted by the Court.

If an additional remedy is available to the petitioners, they can always avail the same. The same will not be in conflict with the proceeding before the Kolkata Municipal Corporation alleging illegal and unauthorised construction.

As regards the disputed question of facts, the same has to be verified and ascertained by the Kolkata Municipal Corporation upon inspection. It is not for the Writ Court to adjudicate any disputed question of facts.

In view of the above, the application filed by the private respondent being GA/2/2023 praying for dismissal of the writ petition stands dismissed.

As it appears from the report filed by the Corporation that certain additions/alternations/deviations have been detected at the time of spot inspection, accordingly, the competent authority of the Kolkata Municipal

Corporation is directed to take steps to deal with the same in accordance with law after giving reasonable opportunity of hearing to all the necessary parties at the earliest but positively within a period of twelve weeks from the date of communication of this order.

Be it recorded that it has been submitted by the private respondent that an application seeking regularisation of minor deviations has been filed before the Corporation.

Learned Advocate for the Corporation submits that the matter has already been placed before the Special Officer (Building) for deciding the same.

The Special Officer (Building) is directed to take steps in terms of the directions passed hereinabove. Reasoned order shall be passed and communicated to the parties at the earliest.

It has been submitted by the learned Advocate representing the petitioners that the writ petitioner no.10 expired during the pendency of the writ petition.

Writ petition and the application being GA/1/2023 stand disposed.

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

(AMRITA SINHA, J.)