

OD-6

ORDER SHEET
WPO No.1571 of 2023
IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
ORIGINAL SIDE

BHOLA PRASAD SONKAR
VS.
THE KOLKATA MUNICIPAL CORPORATION & ORS.

BEFORE:
The Hon'ble JUSTICE AMRITA SINHA
Date:13th September, 2023.

Appearance:
Mr. Nilay Sen Gupta, Adv.
...for Petitioner.
Mr. Srijan Nayak, Adv.
Ms. Rituparna Maitra, Adv.
...for KMC.
Ms. Manju Agarwal, Adv.
Mr. Rishi Agarwal, Adv.
...for Respondent no.6.
Mr. Chayan Gupta, Adv.
Mr. Nirmalya Dasgupta, Adv.
Mr. Lalratan Mondal, Adv.
Mr. Rajesh Upadhyay, Adv.
...for Respondent no.7.
Mr. Anand Farmania, Adv.
Mr. Manoj Kr. Mondal, Adv.
...for State Respondent.

The Court:-The petitioner alleges that the private respondents are raising illegal construction at premises no. T-8/1/4, Jagmohan Mullick Lane, Ward-22, Borough-IV, Kolkata-700007.

The petitioner claims to be the lessee of the property which, according to the petitioner, is a thika property. The petitioner prays for a direction upon the Kolkata Municipal Corporation to demolish the construction made and to set aside/cancel the purported sanctioned building plan in respect of the said premises.

Learned advocate representing the private respondent nos.6 & 7 submits, upon instruction that, the property in question is premises no.8/1/4 and not T-8/1/4 as claimed by the petitioner.

Respondent no.6 claims to be the owner of the premises no. 8/1/4.

Learned advocate representing the Corporation has produced a report forwarded by the engineers of Borough-IV & V of the Kolkata Municipal

Corporation signed on 11.09.2023 wherein it has been mentioned that the department has inspected the site but could not trace out the premises no. T-8/1/4.

The report further mentions that the Corporation sanctioned reconstruction plan under Rule 3(2)(e) of the Kolkata Municipal Corporation Building Rules, 2009 and under Section 410 of the Kolkata Municipal Corporation Act, 1980 read with Circular No.9 of 2013-14 in respect of the premises no.8/1/4 which is not recorded as thika in the records maintained by the Kolkata Municipal Corporation.

It appears from the submissions made on behalf of all the parties that the identification of the premises in question is disputed. There is nothing on record to suggest that the construction is going on over the premises no. T-8/1/4, as alleged by the petitioner. On the contrary, it appears that the premises no. T-8/1/4 could not be traced by the Corporation either physically or on records maintained by the Corporation. Construction at premises no.8/1/4 is being done pursuant to the reconstruction plan sanctioned by the Kolkata Municipal Corporation. There are several disputed questions of facts which cannot be adjudicated by the writ Court.

In view of the above, reliefs sought for by the petitioner cannot be granted.

Writ petition fails and is hereby dismissed.

Instruction forwarded by the engineers of the Kolkata Municipal Corporation be retained with records.

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

(AMRITA SINHA, J.)