

**IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
APPELLATE SIDE**

**MAT 199 of 2024
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IA NO:CAN/1/2024**

**Oriental Nirman Private Limited & Anr.
Vs.
Kolkata Municipal Corporation & Ors.**

Mr. Srijib Chakraborty,
Mr. Sourajit Dasgupta,
Mr. Ashis Kumar Mukherjee,
Mr. Saurabh Prasad
... For the Appellants.

Mr. Ashok Kumar Banerjee, Sr. Adv.,
Mr. Atis Kumar Biswas
... For K.M.C.

Mr. Uday Shankar Bhattacharyya,
Mr. Dipankar Mullick,
Mr. Mritunjay Saha
... For Respondent No.6.

By consent of the parties, the appeal and the connected application are taken up together for hearing.

A judgment and order dated January 08, 2024, whereby the writ petition of the appellants herein, being WPA 10535 of 2011, was disposed of by a learned Judge of this Court, is the subject matter of challenge in this appeal at the instance of the writ petitioners.

It appears that the appellants/writ petitioners purchased Premises No.49A, Prince Golan Mohammed Shah Road, Kolkata-700045, from one Samir Chakraborty by two deeds executed in 2008 and 2009. It also appears that a lease dated May 16, 2002, was granted by Kolkata Metropolitan

Development Authority in favour of one Dhansiri Cooperative Housing Society Limited, a Society registered under the West Bengal Cooperative Societies Act, 1983, in respect of Plot No.25 in Scheme No.118 formed out of original premises no. Plot No.4 of Premises No.49, Prince Golam Mohammed Shah Road. It further appears that Dhansiri obtained a sanctioned building plan from Kolkata Municipal Corporation (in short 'KMC') in the year 2010 and constructed a building at P-25(49), Prince Golam Mohammed Shah Road.

The contention of the writ petitioners appears to be that the plot of land which was owned by the predecessor-in-interest of the writ petitioners was assigned a new number by KMC and then, a building plan was sanctioned in favour of Dhansiri for construction on that plot of land, which actually belonged to Samir Chakraborty and now belongs to the writ petitioners. With this contention, the writ petitioners approached the learned Single Judge by filing the writ petition.

The learned Judge, after hearing all the parties, disposed of the writ petition with the following directions:-

“ Having considered the submissions made on behalf of the parties to this writ petition it appears that petitioners have ventilated grievances relating to according sanctioned plan dated 4th August, 2010 in favour of the respondent no.6 in connection with the premises no.P-25(49) Prince Golam Mohammed Shah Road, Kolkata-700045, without demarcating the two premises namely 49A and P-25(49) Prince Golam Mohammed Shah Road, Kolkata-700045. It has also been submitted during course of hearing on behalf of the petitioners that the right of the petitioners

over premises no.49A is fortified by a decree passed by a civil court.

Considering the contentions raised on behalf of the petitioners this Court disposes of this writ petition by directing the KMC to initiate a proceeding under section 397 in order to verify whether the plan which was accorded in favour of the respondent no.6 dated 4th August, 2010 was rightly sanctioned or not. Before concluding such proceeding petitioners as well as respondent no.6 shall be given opportunity to make deliberations before the concerned authority of KMC in order to demonstrate their right over their respective properties. The concerned authorities of KMC shall be at liberty to demarcate the aforesaid two premises before taking decision on the fate of the sanctioned plan dated 4th August, 2010 which has been accorded in favour of the respondent no.6 and pass a final order within a period of 16 weeks from the date of communication of this order. ”

Being aggrieved, the writ petitioners have come up by way of this appeal.

Appearing for the appellants, Mr. Chakraborty, learned counsel, submitted that the appellants only pray for a slight modification of the learned Single Judge's order. The learned Judge has granted liberty to KMC to demarcate the two premises, i.e., 49A and P-25(49), Prince Golam Mohammed Shah Road, while disposing of the proceedings which KMC has been directed to initiate under Section 397 of the KMC Act. However, not only a mere liberty should be granted to KMC, there should be a direction on KMC to demarcate the aforesaid two premises. This is the only modification sought for.

Mr. Bhattacharya, learned advocate, appearing for Dhansiri, says that demarcation is not possible by KMC. It is a matter for Civil Court. Disputed questions of fact are involved. Dhansiri is also

coming up with an appeal against the order of the learned Single Judge. No order should be passed on this appeal.

Mr. Ashok Kumar Banerjee, learned Senior Advocate, representing KMC, made submission supporting the contention of Dhansiri. He said that KMC is not the appropriate authority for making demarcation of the two premises. He further said, on instruction, that the writ petitioners purchased something in the air. There is actually no such premises like 49A, Prince Golam Mohammed Shah Road.

Be that as it may, we are not concerned with the merits of the dispute between the parties. KMC has not preferred any appeal against the order of the learned Single Judge. Hence, KMC must comply with that order and initiate proceedings under Section 397 of the KMC Act to decide the fate of the building plan sanctioned by KMC in favour of Dhansiri. In course of such proceedings, if KMC finds that there are two separate premises numbered as 49A and P-25(49), then, KMC should demarcate the said two premises. If KMC is of the opinion that it is not possible for it to demarcate the premises, KMC shall record an order to that effect supported by reasons. If KMC finds that there is only one premises and that there is no separate existence of either premises no.P-25(49) or premises no.49A, KMC shall record the same in its order.

The order under appeal is only modified to the aforesaid extent. The appeal and the connected application are, accordingly, disposed of.

We have not entered into the merits of the disputes between the parties. KMC will take an informed decision in accordance with law.

Affidavits not having been called for, the allegations made in the application for appropriate orders, shall be deemed not to have been admitted by the respondents.

All parties shall act on the server copies of this order duly downloaded from the official *website* of this Court.

Urgent photostat certified copies of this order, if applied for, be supplied to the parties on compliance of all necessary formalities.

(M. V. Muralidaran, J.) (Arijit Banerjee, J.)