

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Joymalya Bagchi

And

The Hon'ble Justice Apurba Sinha Ray

MAT 318 of 2024

CAN 2 of 2024

CAN 3 of 2024

SKCL Capital (P) Ltd. & Anr.

-Vs-

Kolkata Municipal Corporation & Ors.

For the Appellants : Mr. Biswaroop Bhattacharyya
Mr. Rajarshi Dutta
Mr. Sarbajit Mukherjee
Ms. S Datta
Ms. Samaita Das Chowdhury

**For the respondent
KMC** : Mr. Biswajit Mukherjee
Mr. Dwijadas Chakraborty

**For the respondent
KMDA** : Mr. Satyajit Talkdar
Ms. Rutika Verma

For respondent no.9 : Ms. Pompey Bose

For the State : Mr. Jahar Lal De
Ms. Sima Adhikari
Ms. Monika Pandit

Heard on : 13.08.2024

Judgment on : 13.08.2024

Joymalya Bagchi, J. :-

1. Appellant is aggrieved by the judgment and order whereby he was relegated to file a civil suit seeking restoration of possession of a plot of land on which private respondent no. 9 is running a girl school.
2. Appellant's case in brief is to the effect that they are the owners of premises no. 17 Uday Sankar Sarani previously Golf Club Road (hereinafter referred to as the said property). They had purchased the property from M/s Haji Munna Miah & Company Pvt. Ltd and had mutated their name in the records of the Kolkata Municipal Corporation. Since then they have been regularly paying taxes in regard to the said property. It is alleged in 2019 some unknown persons illegally broke into the said property and respondent no. 9 has set up a girl's school in the said premises. Criminal case was filed with regard to such unlawful activities and a civil suit being Title Suit no. 1146 of 2009 was instituted before the civil court seeking various reliefs.
3. On the other hand, respondent no. 9 claims by virtue deed of lease dated 9th April 1991 they are in possession of plot no. P16 CIT Scheme CXVIII, Uday Sankar Sarani Kolkata 700033.
4. In this backdrop appellant approached this court seeking cancellation/withdrawal of sanction plan in respect of the building on the land.
5. Hon'ble single judge after considering rival submissions of the parties and report submitted on behalf of Kolkata Municipal Corporation was

of the view the claim of the appellant on the land involved a disputed questions of title and relegated him to seek appropriate remedy before a civil court of competent jurisdiction.

6. Learned counsel for the appellant contends Hon'ble single judge failed to consider the grievance with regard to illegal construction on the land. He also contends the reports submitted before the first court as well as this Bench by Kolkata Municipal Corporation are misleading as they show premises no. P16 CIT Scheme CXVIII, Uday Sankar Sarani Kolkata 700033 and premises no. 17 Uday Sankar Sarani are the same plot.
7. Mr. Mukherjee for KMC submits proceedings have been initiated against respondent no. 9 with regard to the alleged illegal building and the same shall be taken to its logical conclusion at the earliest.
8. Ms. Bose for respondent no. 9 contends that the building had been constructed on their own land and no legal right of the appellant has been infringed.
9. We have considered the rival submissions at the Bar in the light of the materials on record including the reports submitted by Kolkata Municipal Corporation. No doubt, the reports give rise to a confusing state of affairs. Though Kolkata Municipal Corporation has assigned separate holding numbers, namely, premises no. 17 Uday Sankar Sarani and premises no. P16 CIT Scheme CXVIII, Uday Sankar Sarani Kolkata 700033 they are unable to identify the said premises. Both appellant as well as private respondent no. 9 relies on

registered instruments to stake claim on the land in question. This disputed question of title and/or possession of immovable property cannot be decided in a writ petition upon exchange of affidavits. The adjudication requires appreciation of oral and documentary evidence in support of the rival claims regarding title and possession. However, grievance of the appellant in the writ petition does not rest on his title or possession of the plot of land. Appellant contends the building of respondent no. 9 is illegal and sanction plan, if any, with regard to construction liable to be cancelled. Mr. Mukherjee states no sanction plan is available in the records of the Corporation and demolition proceedings under section 400(1) of KMC Act 1980 has been initiated.

10. Under such circumstances we are of the opinion Hon'ble single Bench ought not have ignored the grievance of the appellant with regard to the alleged illegal construction on the plot of land on the plea that there is a dispute regarding title on the land. The dispute regarding title may be decided in the civil suit but this does not preempt the appellant from knocking the doors of the Corporation and invoke its legal duty to demolish unauthorised construction.

11. We are informed that respondent corporation has already initiated demolition proceeding. Accordingly, we modify the order impugned and direct the respondent Corporation to dispose of the demolition proceedings in accordance with law at an early date

preferably within two months from the date of communication of this order.

12. Needless to mention corporation shall give an opportunity of hearing to the person at whose instance the construction had been made and in the event the said person is unable to satisfy the corporation with regard to its validity, pass order for demolition of the structure in accordance with law.
13. We make it clear we have not expressed any opinion with regard to the validity of the construction and it is open to the Corporation to take independent decision in the matter as per law. Needless to mention the issue of title and/or possession on the land may be decided by the civil suit and observations made in this judgment shall not have any bearing on the claims of the parties in the said proceeding.
14. With these directions, appeal is disposed of.

I agree.

(Apurba Sinha Ray, J.)

(Joymalya Bagchi, J.)