

19.06.2024
Sl. No.20
Suman
Ct.No.15

WPA 3838 of 2024

Sarafat Ali Mullick
Vs.
The State of West Bengal and Ors.

Mr. Priyanjit Kundu
Ms. Snigdha Saha
..for the petitioner

Mr. Biswajib Ghosh
Mr. Sumitava Chakraborty
..for respondent no.10

Mr. Amal Kumar Sen, AGP
Ms. Ashima Das (Sil)
..for the State

Ms. Piyali Sengupta
Ms. Manisha Nath
..for KMC

It is the case of the petitioner that he purchased a car parking space at premises no.3K, Picnic Garden, 3rd Lane, Kolkata – 700039.

The Corporation, however, declined to mutate the relevant record in his name.

In the earlier round of writ petition filed by the petitioner, a Co-ordinate Bench of this Court passed the following order dated March 15, 2023.

The relevant part of the said order is quoted below:-

“It will be open for the petitioner to apply before the Kolkata Municipal Corporation seeking reason for cancellation of the application for mutation and thereafter take necessary steps either to challenge the same or to rectify the defect in the application, if any.

In the event an application is made by the petitioner seeking reason for cancellation of the application for mutation, then the reason shall be communicated to the petitioner at the earliest, but positively within a period of six weeks from the date of making the application.

The writ petition stands disposed of.”

It appears that pursuant to the said order dated March 15, 2023, the Kolkata Municipal Corporation gave an opportunity of hearing to all parties concerned and passed a reasoned order dated September 20, 2023.

The relevant part of the said order is quoted below:-

“After scrutiny of the file and submitted documents especially the building plan, it is observed that the applied portion of land is a part of a residential complex wherein total 11 numbers of flat owners are residing. Office of Assessor-Collector (TTD) has received an objection letter by the other flat owners dated 14/10/2020, wherein they raised vehement objection against the mutation application prayed by Sarafat Ali Mullick (Petitioner). From the Flat owners’ side Smt. Jyotsna Das (Sapui), Smt. Rama Ghosh, Smt. Manjushri Samajdar, Sri Guru Gobinda Sarkar, Sri Saktipada Banerjee have sent an email to Assessor-Collector (TTD) on 28th April, 2023 and claimed that all the open space is a part of mandatory open space which are proportionate share of all the flat owners. They have also reproduced the following chart from the Building Sanctioned Plan. Their submission is as under:-

“Land Area =469.70 sq mtr. (7 k-0CH-15 Sft.)

Ground cover area=232.02 sq.mtr.

Open area=237.68 sq. mtr.

Permissible F.A.R.=1.75

(i) Ground floor=232.02 sq m.

(ii) 1st floor. =212.79 sq.m.

(iii) 2nd floor. =218.35 sq. m.

(iv) 3rd floor. =145.93 sq.m.

Total floor area =809.09 sq.m.

Proposed F.A.R.=809.09/469.70

=1,722.

In this calculation, it is clear that maximum floor area was consumed and there is not any other separate vacant land. All the open space is a part of mandatory open space which are proportionate share of all the flat owners.”

In this regard, Assistant Engineer (Building) of KMC (Ward-66) was asked for verification of the building plan and to place a report. Subsequently, on 18.8.2023, the Assistant Engineer (C/Buildings/Br-VII) has reported that “there is no provision of area for open car parking provided within the mandatory open space.”

The building plan shows that it was sanctioned based on entire land i.e. 7 Kattah 15 sft. Moreover the deed submitted by the petitioner shows that the land was purchased for car parking which is contradictory to the observation of Assistant Engineer (Buildings). Hence mutation in favour of petitioner could not be given.

Hearing is thus disposed of.”

The learned advocate appearing for the petitioner submits that the petitioner has purchased a portion of the plot, that was a part of the sanctioned building plan. Nothing has been shown to substantiate his stand. The reasoned order of the Corporation clearly indicates that in the sanctioned plan there was no provision for open car parking space within the mandatory open space.

In that view of the matter, I am of the view that the Corporation has rightly rejected the prayer of the petitioner for mutation. No interference is called for.

Accordingly, **WPA 3838 of 2024** is dismissed.

Urgent photostat certified copy of this order, if applied for, be supplied to the learned advocates for the parties on usual undertakings.

(Kausik Chanda, J.)