

03. 14.03.2024
bd. Ct.15

W.P.A. 4836 of 2016

Malika International Private Limited & Anr.

-vs-

Kolkata Municipal Corporation & Ors.

Mr. Amalesh Roy
Mrs. Mousumi Bhowal ... for the Petitioners.

Mr. Alak Kumar Ghosh ... for the KMC.

Mr. Satyajit Talukdar
Ms. Ritika Verma ... for the KMDA

In the writ petition order passed in connection with the proceeding initiated under section 397 of the Kolkata Municipal Corporation Act, 1980 is assailed.

Mr. Roy, learned advocate while arguing on behalf of the petitioners has pointed out that a joint inspection was ordered to be carried out in presence of the representatives of the Kolkata Municipal Corporation (KMC), Kolkata Improvement Trust (KIT) and the petitioners. Accordingly, such inspection took place by visit of inspection team to the site in question and a report was furnished by the Chief Valuer-in-Charge, KIT and Chief Valuer Surveyor, KMC before the Joint Municipal Commissioner for taking decision in connection with the proceeding initiated against the petitioner under section 397. It is also contended that ultimately on 23rd June, 2014 the Joint Municipal Commissioner passed order thereby decided to withdraw the plan sanctioned in favour of the

petitioner. As a result whereof, the construction which was made pursuant to the plan which was previously sanctioned by the concerned authority of Kolkata Municipal Corporation needs to be demolished. It is submitted that though petitioner was a party to the joint inspection team which visited the site in question as per order dated 12th March, 2014 of the Joint Municipal Commissioner but the copy of the joint inspection report was not supplied to the petitioner before passing order on 23rd June, 2014 which amounts to violation of natural justice vitiating the order dated 23rd June, 2014.

Mr. Ghosh, learned advocate representing the Kolkata Municipal Corporation has made endeavour to resist the submission made on behalf of the petitioner based on the fact that subsequent to the order dated 23rd June, 2014 inspection report was supplied to the petitioner therefore it would have been open to the petitioner to approach the Corporation in support of his case. Attention of this Court has also been drawn to page 74 of the writ petition containing a letter dated 1st August, 2012 issued by the Cheif Engineer Kolkata Improvement Trust wherefrom it emanates that it was found by the Kolkata Improvement Trust authority that the land in question was acquired land of Kolkata Improvement Trust in Scheme No. VI-M & VI-M(S). It is submitted that as per letter dated 1st August, 2012 it is apparent that the land in question belongs to Kolkata Improvement Trust.

It has further been contended that though

this letter dated 1st August, 2012 was issued against the petitioner the application was made for issuing sanctioned plan in his favour.

Mr. Talukdar, learned advocate representing the Kolkata Improvement Trust (for short “KIT”) has also placed reliance on the letter dated 1st August, 2012 addressed to the petitioner and submitted that after issuance of such letter the petitioner ought not to have submitted application praying for sanctioning plan in his favour. Therefore, according to the respondent authorities there is no flaw in the order dated 23rd June, 2014 issued by the Joint Municipal Commissioner.

While examining the impugned order dated 23rd June, 2014 it appears that in terms of the order dated 12th March, 2014 a joint inspection was carried out by a team consisting of representatives of KMC, KIT and the petitioner himself. A report was prepared based on such joint inspection which formed part of records in connection with the proceeding initiated by the Kolkata Municipal Corporation under section 397. While taking decision the Joint Municipal Commissioner placed reliance on the said joint inspection report. Question accrues whether such joint inspection report was supplied to the petitioner prior to taking decision on 23rd June, 2014 or not. It appears from the submissions made on behalf of the parties to this writ petition that subsequent to the order passed on 23rd June, 2014 the joint inspection report was supplied but that does not fulfil statutory requirements as contemplated under

section 397. It has been provided under section 397 that the concerned authority of Kolkata Municipal Corporation is empowered to take decision if it is found that by resorting to material misrepresentation or any fraudulent statement made in the notice given or information furnished under section 393 or section 394 or section 395, a plan has been sanctioned then same can be withdrawn/cancelled subject to providing reasonable opportunity of being heard to the person to be affected by the order to be passed under section 397. The expression “reasonable opportunity” includes supply of relevant documents to the person who obtained sanctioned plan, if those documents are considered by the adjudicating authority in a proceeding under section 397. In the present case on mere reading of the order dated 23rd June, 2014 and in consideration of the submission made on behalf of the parties it is found that the joint inspection report which was relied upon by the Joint Municipal Commissioner while passing order dated 23rd June, 2014 was not supplied to the petitioner therefore the condition stipulated by incorporating the expression “reasonable opportunity” in section 397 gets defeated. The concerned authority of Kolkata Municipal Corporation was duty bound to supply the inspection report to the petitioner and to grant him opportunity to make deliberation based on such report before passing order on 23rd June, 2014 which has not been done in the present case.

It further appears from the second paragraph of the order dated 23rd June, 2014 that during

course of hearing before the Joint Municipal Commissioner the engineers of the Building Department of Kolkata Municipal Corporation submitted that following office order dated 22nd March, 2010 intimation was sent to Kolkata Improvement Trust authority requesting them to send their views regarding sanctioning building plan but the concerned authority of Kolkata Improvement Trust did not turn up within specified time and after lapse of 45 days from the date of receipt of the letter by the Kolkata Improvement Trust, the Building Department of Kolkata Municipal Corporation issued sanctioned plan in favour of the petitioner. Such recording of facts goes to show that ample opportunity was given to Kolkata Improvement Trust to respond to the intimation issued on behalf of the Kolkata Municipal Corporation but contemporaneously the Kolkata Improvement Trust authority failed to supply the necessary information which ultimately led the concerned authority of Kolkata Municipal Corporation to issue sanctioned plan in favour of the petitioner on 11th March, 2013.

In view of aforesaid discussion the order of the Joint Municipal Commissioner dated 23rd June, 2014 stands aside. Since copy of the reports of the joint inspection are presently lying with the petitioner, petitioner is granted leave to make a representation to the Municipal Commissioner by fortnight from date. Irrespective of receipt of such representation from the petitioner the Municipal Commissioner or his delegate shall take final decision on the proceeding which was initiated

against the petitioner under section 397 within a period of four weeks thereafter after granting opportunity of hearing to the petitioner or his representative, the representatives of Kolkata Improvement Trust (KIT)/Kolkata Metropolitan Development Authority (KMDA) and the concerned department of Kolkata Municipal Corporation (KMC). The decision to be taken by the Municipal Commissioner or his delegate shall be communicated to the parties within seven days thereafter.

Till the decision to be taken by the Municipal Commissioner or his delegate no further constructions shall be made at the site in question.

With the aforesaid direction and observation the writ petition stands disposed of.

However, there shall be no order as to costs.

Urgent photostat certified copy of the order, if applied for, be given to the parties, upon usual undertakings.

(Saugata Bhattacharyya, J.)