

D/L.6.
March 13, 2024.
MNS.

WPA No. 9863 of 2021
+
CAN 3 of 2023

Akash Jain and others
Vs.
State of West Bengal and others

Mr. Bhaskar Prosad Banerjee,
Mr. Partha Sarathi Das,
Mr. Parashar Baidya,
Ms. Shanta Sarkar,
Mr. Debojyoti De

... for the petitioners.

Mr. Jaydip Banerjee,
Mr. Rahul Karmakar,
Mr. S. P. Chattopadhyay

...for the State.

Mr. Alok Kumar Ghosh,
Mr. Subhrangshu Panda,
Ms. Ina Bhattacharyya

...for the KMC.

Mr. Nirmalya Dasgupta,
Mr. Chanchal Kummar Dutta,
Ms. Krishna Mallick

...for the respondent no. 10.

1. Affidavit-of-service, affidavit-in-opposition and affidavit-in-reply filed in Court today be kept on record.
2. The petitioners allege that they are elderly persons. The private respondent, it is contended, has made an unauthorised construction, thereby blocking the fire escape of the petitioners' residence. When the

petitioners approached the Kolkata Municipal Corporation (KMC), it is submitted that sufficient steps were not taken by the said entity.

3. Learned counsel for the private respondent places reliance on the annexures to the affidavit-in-opposition filed in Court. Learned counsel submits that the private respondent was granted tenancy by most of the petitioners in respect of the premises in the year 1996, that is, much before the filing of the complaint or the writ petition.
4. Subsequently, in the year 2022, after the property was developed, the authorised signatory of the petitioners, that is, the developer, also executed a deed of conveyance in favour of the private respondent.
5. It is argued that the writ petition is merely a ploy to oust the private respondent despite the latter having right, title and interest in the property.
6. Learned counsel for the petitioners, in reply, submits that the deed of conveyance was executed the developer behind the back of the petitioners by resorting to fraud.
7. Learned counsel for the Kolkata Municipal Corporation (KMC) places reliance on a report

filed by the KMC, where it is indicated that a brick wall of height 1.2 meter has been erected on the eastern side of open garage leading from south to north direction. It is contended that a stop work notice under Section 401 of the KMC Act, 1980 was issued on March 5, 2022.

8. Although the private respondent controverts the allegation that the said wall is unlawful since the same falls within the purview of the ceiling limit of a wall, it would be premature to go into such question at this stage by the writ court.
9. Since the KMC was of the opinion that the private respondent could not produce documents, which the private respondent has now annexed to the affidavit-in-opposition, it would only be appropriate if the KMC comes to a conclusion as to whether there has been any unauthorised construction on the part of the private respondent and, if so, whether it has been lawfully regularized thereafter.
10. Insofar as the allegations and counter-allegations of the petitioners and the private respondent regarding the purported right, title and interest of the parties in respect of the property-in-question, the same can only be the subject matter of the regular civil suit. If

the parties are aggrieved on count of infringement of their civil rights, it will be open to them to approach the civil court by way of a civil suit to thrash out such dispute.

11. Accordingly, WPA No. 9863 of 2021 is disposed of in the light of the above observations by directing the KMC to fix a date of hearing, upon prior notice to the petitioners as well as the private respondent, positively within a fortnight from date.

12. Upon giving such notice and giving opportunity of hearing to both the petitioners and the private respondent as well as permitting them to produce their respective documents, the KMC shall come to a reasoned conclusion as to whether there has been any violation of Municipal Law on the part of the private respondent.

13. The above exercise shall be concluded by the KMC within a further fortnight, that is, within four weeks from this date.

14. The KMC shall communicate its decision in writing to both the petitioners as well as the private respondent immediately thereafter.

15. In the event there is any perceived violation of law, the KMC shall proceed further and take appropriate steps in accordance with law.

16. In view of disposal of the writ petition, the connected application, bearing CAN 3 of 2023, stands accordingly disposed of as well.

17. There will be no order as to costs.

18. Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Sabyasachi Bhattacharyya, J.)