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13.06.2024
Ct. no. 551
sb

WPA 8702 of 2018

Kartick Chandra Kashyapi & ors.
-Vs-
Kolkata Municipal Corporation & Ors.

Mr. Dyutiman Banerjee
Mr. Vishal Mallick ...for the Petitioners

Mr. Gopal Chandra Das
Mr. Debangshu Monal
Ms. Ananya Das ...for the KMC

Mr. Naba Kumar Das
Mr. Pathik Bandhu Banerjee ...for the KMDA

1. The writ petitioners, the respondent nos. 1 to 4 i.e. Kolkata Municipal Corporation (KMC in short) and its officials and the respondent no. 5 (KMDA) are represented by their respective advocates.
2. By filing the instant writ petition, the petitioners have prayed for issuance of writ of mandamus against the respondents more specifically the respondent nos. 1 to 4 to take appropriate steps on account of an illegal encroachment of a common passage which is being used by the writ petitioners for egress and ingress to their house i.e. premises nos. 68/4B, 68/4C and 68/4D Biddhannagar Road, Kolkata-700067.
3. It is the grievance of the petitioners that there existed six feet passage which has been encroached by the

private respondent no. 6(a) and 7 by raising a boundary wall and though due complain has been lodged with the KMC, the KMC authority has not taken any steps for demolition of the said boundary wall.

4. In course of hearing, learned advocate for the writ petitioner submits that from page 5 of the exception to the report filed by the petitioner, it would reveal that the alleged encroachment is explicit and thus, the KMC authority is duty bound to demolish such illegal encroachment since such illegal boundary wall has been constructed without taking any permission from the KMC authority.
5. Per contra, learned advocate for the KMC draws attention of this court to page 3 of the report as submitted by the KMC, pursuant to the order of this court. It is submitted that in the report it has been specifically mentioned that no unauthorized construction has been found at the premises in question. Learned advocate for the KMC also draws attention of this court that page 3 of the exception to the report as filed by the writ petitioner. It is submitted that from such exception, it would reveal that it is the averment of the writ petitioners that the private respondents have encroached the common passage by constructing the boundary wall without sanction. It is further submitted that under Section

2(5) of the KMC Act, 1980, no sanction is required for construction of a boundary wall up to the height of three metres. It is further submitted on behalf of the KMC that the dispute which has been raised, is basically a civil dispute and that from annexures to the writ petition, it reveals that for obtaining appropriate relief, the writ petitioners have already filed Title Suit no. 36 of 2008 before the appropriate civil court with a prayer for decree for declaration, decree for permanent injunction, decree for mandatory injunction and other reliefs.

6. In course of his submission, learned advocate for the KMDA echoes the version of the learned advocate for the KMC.
7. On perusal of the entire materials placed before this court, it would reveal that the dispute between the writ petitioner and the private respondent no. 6(a) and 7 centres around the construction of a boundary wall over a passage. It reveals further that the writ petitioners have already approached civil court for ventilating their grievance.
8. It is settled principle of law that by exchange of affidavits, a boundary dispute cannot adjudicate by a writ court especially when alternative remedy is available to the writ petitioner which the petitioners have already availed of.

9. In view of the discussions made hereinabove, this court finds no reason to entertain the instant writ petition. Accordingly, this court holds that the instant writ petition is devoid of any merit and is hereby dismissed.
10. It is however made clear that finding of this court while disposing of the instant writ petition shall have got no bearing in the pending civil litigation between the writ petitioners and the private respondents and in view of such, the said jurisdictional civil court is at liberty to dispose of the civil suit as pending between the writ petitioner and the private respondents on its own merit without being influenced by any of the observations made herein.
11. Urgent Photostat certified copy of this order, duly applied for, be given to the parties upon compliance of all requisite formalities.

(Partha Sarathi Sen, J.)