

16.05.2024
Court No. 15
Item No. 15
(Suvendu)

W.P.A. 12605 of 2017
With
CAN 1/2018 (CAN 6833/2018)
CAN 2/2018 (CAN 6834/2018)
CAN 4/ 2024

Sabyasachi Mullick Chowdhury
(Sunit Kumar Mallick Chowdhury, since deceased)
-Versus-

The Kolkata Municipal Corporation & Ors.

Mr. Rupak Ghosh
Mr. Vishwarup Acharyya
Mr. Akash Dutta
.....for the petitioner

Mr. Ashok Kumar Banerjee, Sr. Adv.
Mr. Alok Kr. Ghosh
Mrs. Sima Chakraborty
.....for the KMC

Mr. Ankit Sureka
Mr. Asis Dutta
...for the Metropolitan Co-operative
Housing Society Limited

The writ petition is heard in presence of
the learned advocates representing the
petitioner, Kolkata Municipal Corporation and
respondent nos. 4 and 5.

Notwithstanding the prayer couched in
this writ petition seeking demolition of the
constructions made by the members of
Metropolitan Co-operative Housing Society
Limited (hereinafter referred to as "said society")
based on recommendation made by eight

members committee which was formed in terms of the order dated 3rd January, 2022 passed by the Special Bench, National Green Tribunal in Original Application No. 25/2016/EZ along with other matters, Mr Rupak Ghosh, learned counsel representing the petitioner today has submitted that the prayer for demolition of the constructions made by members of the said society is not pressed at the present moment. However, prayer has been made for issuance of direction by this Court upon the concerned authority of Kolkata Municipal Corporation to conclude the proceeding which was proposed to be initiated in terms of Section 397 of the Kolkata Municipal Corporation Act, 1980 based on the recommendation made by the eight members committee.

It has been submitted on behalf of the petitioner that plot no. 268 under Mouza – Nimopoktan, JL No. 1, Dihi Panchanangram, Ward No. 57 of Kolkata Municipal Corporation is originally a waterbody and the same is alleged to have been filled up by the said society for allotment of plots in favour of the members of the said society for the purpose of construction of residential houses.

On query being made to the learned advocate representing the petitioner with regard to the steps taken by the Corporation in terms of Section 397, reliance is placed on an order dated 19th December, 2022 passed by the Special Municipal Commissioner, Kolkata Municipal Corporation which is annexed at pages 149 to 150A to the affidavit-in-reply used on behalf of the petitioner against the affidavit-in-opposition used by Kolkata Municipal Corporation. On perusal of the said order dated 19th December, 2022 of the Special Municipal Commissioner, it transpires that in connection with the four plots under the aforesaid plot no. 268 construction has been made by the members of the said society and in connection with two other plots no such construction has been made.

The concerned authority of the Corporation, as it appears from the said order dated 19th December, 2022, decided to initiate proceeding under Section 397 and in this regard a notice was issued to the plot holders being the members of the said society as to why appropriate steps shall not be taken against them in the backdrop of facts that a complaint was lodged by the *predecessor-in-interest* of the present petitioner that illegally construction has

been made over the plot no. 268 upon filling up waterbody which is contrary to the findings made by the eight members committee as constituted in terms of the order of the Special Bench, National Green Tribunal.

Mr. Sureka, learned advocate representing the said society has opposed the prayer of the petitioner on the count that there are altogether 612 members in the said society and in the event Section 397 proceeding is initiated in connection with all the plots which were allotted to the members of the said society without making them party in that event the right of the members of the said society would be impinged upon.

However, today in view of submissions made on behalf of the petitioner that grievance centres around plot no. 268 where four residential houses have been built up and at present the petitioner is not pressing the prayer for demolition of the constructions made by the members of the said society, it has been submitted on behalf of the said society that the matter may be decided by the concerned authority of the Corporation in accordance with law.

It is also submitted on behalf of the said society that before taking final decision opportunity should be afforded to the allottees being the members of the said society to make deliberation before the authority concerned.

Kolkata Municipal Corporation is represented by Mr. Banerjee, learned senior advocate who submitted that since an order was passed by the Special Municipal Commissioner on 19th December, 2022 after the recommendation was made by the eight members committee, if appropriate direction is given the steps shall be taken to conclude the proceeding under Section 397 in accordance with law in connection with the constructions made over the plot no. 268.

Having considered the submissions made and taking note of the document which is at page 149 of the affidavit-in-reply used on behalf of the petitioner to the affidavit-in-opposition of the Corporation, the writ petition stands disposed of thereby directing the concerned authority of Kolkata Municipal Corporation to take necessary steps for bringing the proceeding which was initiated under Section 397 into logical conclusion after granting opportunity of hearing to the interested parties provided no

order is passed in the writ petitions preferred by some of the plot holders.

Let such proceeding be concluded within a period of 16 weeks from the date of communication of this order and the final order to be passed by the concerned authority shall be communicated to the parties within one week thereafter.

However, it is made clear that this Court has not gone into the merit of the issue relating to the validity of the construction made by the members of the said society on the individual plots under plot no. 268.

It is clarified that exercise to be carried out by the concerned authority of Kolkata Municipal Corporation in connection with the proceeding under Section 397 shall be restricted to plot nos. CZ-9B, CZ-14A, CZ-14B, CZ-15A, CZ -20A, CZ -21A and CZ -26A/B/C.

Connected applications, if pending, are also disposed of.

There shall be, however, no order as to costs.

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

(Saugata Bhattacharyya, J.)

