

05 25.01.2024
rkd Ct.15

W.P.A. 14410 of 2018

Dilip Ray
-vs-
Howrah Municipal Corporation & Ors.

Syed Julfikar Ali

....for the petitioner.

Mr. Mahendra Prasad Gupta,
Mr. Dilip Kumar Saila,
Mr. Ayan Mitra,
Ms. Antara Panja,
Mr. Sartak Singh,
Ms. Adrisnata Chakraborty

....for the respondent no.6.

Mr. Sandipan Ganguly,
Mr. Aniket Sureka

....for the HMC.

The writ petition is taken up for consideration in presence of the learned advocates representing the parties.

In the writ petition petitioner has prayed for consideration of representation date 2nd July, 2018 by the concerned authority of Howrah Municipal Corporation and also prayer has been made to demolish unauthorised construction made by the private respondents on the plot of land situates at LR Khatian no.4770-4779, 4756, Mouza- Uttar Baksara under Howrah Municipal Corporation.

During course of hearing Mr. Gupta, learned advocate representing the substituted respondent no.6 has brought to the attention of this Court one notarised affidavit affirmed by the petitioner Dilip Ray on 20th September, 2018 being annexed to the affidavit-in-opposition.

On perusal of the said affidavit it appears that it has been admitted by the petitioner that he was one of the co-owners of the land in question over which construction was made and under his supervision building was constructed. It is also stated in paragraph 4 of the said affidavit that the petitioner was supposed to get additional shares out of additional construction being made on the said land which was duly regularised by the competent authority. In addition thereto, it is averred therein that since the claims of the petitioner was settled he decided to withdraw the case and he would not have any objection against any other party in respect of the building in question. In paragraph 6 of the said affidavit it has also been averred that developer was granted leave by the petitioner to appoint an advocate who would act on behalf of the petitioner and to appear for rest of the proceedings in connection with the present writ petition and to get the same dismissed.

Having perused the averments made in the affidavit dated 20th September, 2018 this Court posed query to the learned advocate representing the petitioner whether the affidavit was affirmed by the petitioner or not which the learned advocate has denied. According to the learned advocate the affidavit was not signed by the petitioner.

However, on comparing the signature of the petitioner (Dilip Ray) which is appearing in the relevant part of the writ petition, the notarised affidavit dated 20th September, 2018 and the affidavit-in-reply filed on behalf of the petitioner, it appears that the signature of the petitioner which is there in the notarised affidavit dated 20th September, 2018 is not matching with the signature in the affidavit-in-reply affirmed on 16th January, 2024 but the signature of the petitioner in the notarised affidavit dated 20th September, 2018 is almost similar to the signature which is appearing at page 12 of the writ petition, just below the prayer.

Since it has been submitted on behalf of the petitioner that over the years the pattern of signature of the petitioner got changed and the petitioner is an aged person then it can be concluded though signature of the petitioner which is appearing in the notarised affidavit dated 20th September, 2018 is not exactly same as the signature which is appearing just below the prayer of the writ petition but both are the signatures of a same person taking cue from the submission made on behalf of the petitioner that time to time signature of the petitioner varied.

In addition thereto, another issue needs to

be taken into consideration that the alleged construction was completed in 2011 and the writ petition was filed on 6th August, 2018, after seven years. Therefore the petitioner acquiesced in spite of being aware of the nature of construction made by the respondent no.6 in year 2011.

In view of aforesaid scenario, it transpires that petitioner has not approached this Court with clean hands.

Accordingly, the writ petition stands dismissed.

However, there shall be no order as to costs.

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

(Saugata Bhattacharyya, J.)