

ML-14

04.11.2024
Court No.26
(AD)

(Dismissed)

FMA 218 of 2022
With
IA No.: CAN 1 of 2022

Gitasree Banerjee
Vs.
The Kolkata Metro Rail Corporation Limited and
Anr.

Mr. Prosenjit Mukherjee, Advocate
Mr. Arghya Kamal Das, Advocate
Ms. Manisa Mandal, Advocate
... for the appellant

Mr. Jishnu Chowdhury, Advocate
Ms. Sreya Basu Mallick, Advocate
... for the respondent no.1

1. Appeal is directed against the order dated September 13, 2021 passed in WPA 12602 of 2021.
2. By the impugned order, the learned Single Judge dismissed the writ petition with costs assessed at Rs.5,100/- payable by the writ petitioner to the Kolkata Metro Rail Corporation Limited within a period of ten days from the date of the order.
3. Learned Advocate appearing for the appellant submits that, the appellant is a beneficiary of a trust in respect of an immovable property which was affected by the construction made by the Metro Railway. In support of such contention, he draws the attention of the Court to various documents. He submits that, the property in question stood affected and that it was damaged by the construction of the Metro Railway is admitted. He submits that, two of the

beneficiaries under the trust with the appellant being the third beneficiary, received compensation of Rs.5,00,000/- each. He submits that, the appellant is a resident of such property and is entitled to the compensation of Rs.5,00,000/- that was paid to the other who occupied such premises.

4. Learned Advocate appearing for the Metro Railways submits that, under the relevant Act of Parliament, Metro Railways was obliged to repair the building concerned. He refers to the writ petition and submits that, the appellant as the writ petitioner essentially seeks a compensation of Rs.5,00,000/- which was paid by the Metro Railway to persons who were moved out of the property affected during the process of repair of the damaged property. He submits that, the appellant was not found at the property when the inhabitants of the property concerned were moved out of the property. He submits that, all those persons who were found in occupation of the property concerned were paid the relevant compensation. He points out that, there is a disputed question of fact as to whether, the appellant actually physically resided at the property concerned or not.
5. Learned Judge proceeded on the basis of that, the appellant failed to establish conclusively that the

appellant resided at the property concerned at the material point of time.

6. In support of the contention that the appellant resided at the property at the relevant period of time, an electricity bill and the voter identity card which shows that, there is an electricity meter in the name of the appellant at the property concerned and that the voter identity contains the address of the appellant at the property concerned are pressed into service. That apart, the Trust Deed which speaks of, appellant as one of the beneficiaries of the trust in respect of the immovable property concerned is also relied upon.
7. Appellant is a lady and married. Property concerned is not her matrimonial home. The property apparently was damaged due to the constructions undertaken by the Metro Railway. The persons who were found in the damaged property were moved out of the damaged property and given alternative accommodation. During the process of removal of such persons, a list of persons who were removed out of the property was prepared. Appellant does not figure in such list.
8. Metro Railway extended inconvenience compensation of Rs.5,00,000/- to the persons who were moved out of the damaged property. Such inconvenience compensation was paid to the

persons who were actually moved out of the affected property.

9. There is no materials on record to suggest, let alone establish that the appellant was moved out of the affected property at the relevant point of time for the appellant to receive the inconvenience compensation of Rs.5,00,000/-. That is the relief that the appellant is seeking in the writ petition which the learned Single Judge rightly refused. That apart, there are disputed questions of fact as to whether or not, the appellant actually resided at the damaged property at the material point of time to receive the inconvenience compensation of Rs.5,00,000/-.
10. In such circumstances, we find no merit in the appeal.
11. **FMA 218 of 2022** and **IA No.: CAN 1 of 2022** are dismissed.
12. Costs awarded by the learned Single Judge will be paid by the appellant within a fortnight from date. In default, respondents will initiate proceedings for recovery of the costs.

(Debangsu Basak, J.)

(Md. Shabbar Rashidi, J.)