

22.05.2024
Sl. No.23
g.b.
Court No.24

WPA 21826 of 2022

Mrs. Rubi Jha & Ors.
-Vs-
The K. M. C. & Ors.
With

WPA 9953 of 2023

Sri Madhab Bhunia
Vs.
The K. M. C. & Ors.

Mr. Nayan C. Bihani
Mr. Debasish Ghosh
Mr. Suvadeep Sen
.....For the Petitioners in WPA 21826 of 2022

Mr. Prasenjit Debnath
Ms. Punam Basu
Ms. Pritha Biswas
.....For the Petitioners in WPA 9953 of 2023 and Respondent
Nos. 6 and 7 in WPA 21826 of 2022

Mr. Gopal Chandra Das
Mr. Debangshu Mondal
.....For the KMC

The matter relates to premises no.1570, Purba Putiari Dakshinpara, Ward No. 114, Borough - XI of Kolkata Municipal Corporation.

Mrs. Rubi Jha & Ors. are flat holders of the subject premises. Madhab Bhuniya and Smt. Deepmala Chowdhury @ Deepmala Bhuniya are running a play school at the subject premises. Mrs. Rubi Jha & Ors. submit that plan was sanctioned for construction of residential building at the said place but Madhab Bhuniya & Anr. is running commercial activities therefrom.

Learned advocate representing Madhab Bhuniya & Anr. submits, upon instruction that, valid trade licence was obtained for running the school from the said place. Section 435 A of the KMC Act, 1980 permits running of

business specified in Schedule VA of the Act from residential buildings.

It has been further submitted that title suit was filed by Mrs. Rubi Jha & Ors. before the learned civil court and initially an order of injunction was passed restraining Madhab Bhuniya & Anr. from running the play school, but later on, upon production of the requisite licence, the order of injunction stood vacated. It has further been submitted that plan was sanctioned for using the structure for mixed purpose. There are several shop rooms running from the said premises.

Learned advocate representing the Corporation relies upon the instruction forwarded by the engineers of the Corporation signed on 18th May, 2024 which mentions that a spot inspection was conducted and it revealed that a pre-primary school is running from flat nos. A and B in the first floor. Two flats in the third floor C and D have been connected and lay out of the sanctioned plan has been completely changed. Letter has been issued to the occupiers to produce the valid sanctioned plan but the plan is yet to be submitted.

Learned advocate representing the Corporation submits that in view of the ongoing parliamentary election, 2024, the officers are busy with the election duty and immediately after completion of the election, steps will be taken in the matter to deal with the illegality that has been identified.

From the documents annexed to the writ petition and upon perusal of the instruction forwarded by the Corporation, it appears that the plan in question was sanctioned for construction of a residential building, whereas Madhab Bhuniya & Anr. asserts that plan was sanctioned for mixed use of the subject structure. The submission of Madhab Bhuniya & Anr. does not appear to be proper. There is no permission granted in favour of

any of the occupiers of the subject structure for change of use of the residential building. Section 435 A does not permit running of pre-primary school from a residential building.

Mere issuance of a trade licence does not imply that permission is not required to be taken for running commercial activity from residential building where plan was sanctioned for residential use.

In view of the above, the instant writ petition is disposed of by directing the Executive Engineer (Building)/C, Borough – XI to take necessary steps to deal with all the illegalities that have been detected at the time of site inspection in accordance with law, after giving the reasonable opportunity of hearing to all the necessary parties at the earliest but positively within a period of twelve weeks from the date of communication of this order. The aforesaid respondents shall take all remedial measures to remove the illegalities as detected.

The writ petition stands disposed of.

Supplementary affidavit filed by Mrs. Rubi Jha & Ors. be kept with the record.

Let WPA 9953 of 2023 be treated as on day's list and disposed of accordingly.

The concerned officer of the Corporation is directed to regularize the appointment of Mr. Debangsu Mondal, learned advocate who usually appear for the Kolkata Municipal Corporation.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties expeditiously after compliance of all necessary formalities.

(Amrita Sinha, J.)