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16.05.2024
Ct. No. 15
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W.P.A. 9824 of 2020

**Sri Vinay Kumar Shraff & Anr.
Vs.
Municipal Commissioner, Kolkata Municipal
Corporation & Ors.**

Mr. Vinay Kumar Shraff
....petitioner in-person
Mr. Himangshu Kumar Ray
Mr. Dev Agarwal
...for the petitioner

Mr. Pawan Kr. Jajodia
Mr. Joyak Kr. Gupta
...for the respondent nos. 4 and 5

Mr. Gurudas Mitra
Mr. Atis Kumar Biswas
...for the KMC

Affidavit-of-service filed on behalf of the petitioner is taken on record.

Report filed on behalf of the Kolkata Municipal Corporation signed on 15th May, 2024 is also taken on record.

Writ petition is considered pursuant to the order dated 2nd May, 2024 in presence of the petitioner in person online and learned advocate representing the Kolkata Municipal Corporation and private respondents.

In presenting this writ petition petitioner has prayed for providing access to him to the terrace and roof of the premises situated at 18/1, Dover Place, Kolkata-700019. According to the petitioner he is the owner of the flat situated in the aforesaid premises. Therefore, he

has got right to use the terrace since the terrace falls under the expression common space as used in the deed of conveyance which was executed in his favour while purchasing flat in question.

The learned advocate representing the corporation submits that on inspection it has been found that at the roof there is tin shade structure which is beyond the sanctioned plan for which leave should be granted to the corporation to take steps in accordance with law to deal with such unauthorised erection of tin shade structure.

Learned advocate representing the added respondents has submitted that southern part of the roof of the said premises comes under the exclusive ownership right of one Neena Kejriwal being additional respondent no. 4 but apart from the southern part of the roof rest of the roof can be accessed by any flat owners of the premises in question. It is also submitted that excluding southern part the petitioner is also entitled to use the said roof in question.

On the contrary it has been specifically submitted on behalf of the petitioner no. 1 who is appearing in person that he has right of access to the entire part of the said roof and such right cannot be impinged upon in any way whatsoever.

While considering the issue involved in this writ petition this Court has also considered the report of the officer-in-charge, Gariahat Police Station dated 24th April,

2024 wherein it has been specifically stated that the grievance expressed by the petitioner relates to civil in nature since inter se dispute of the flat owners relating to right over the roof in question is involved.

In view of the nature of dispute as involved in this writ petition this Court does not find that the present writ petition is maintainable since petitioner is agitating his right over the roof which is denied by the private respondents on the ground that the southern part of the said roof comes under the exclusive ownership of the additional respondent no. 4.

In view of aforesaid consideration the writ petition stands dismissed as found not maintainable.

However, this order shall not preclude the petitioner to take steps in accordance with law, if so advised, in order to protect his right to access the roof in question.

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

(Saugata Bhattacharyya, J.)