

14.06.2024
Ct. No. 02
Items No. 38
Cp

Calcutta High Court
In the Circuit Bench at Jalpaiguri

WPA No. 1153 of 2024

Smt. Indira Sharma & anr.
Vs.
The State of West Bengal & ors.

Mr. Bapi Sarkar
Mr. S. Saha

.....for the petitioners.

Mr. Arun Kumr Sarkar
Mr. Abhijit Sarkar
Mr. S. M. Pradhan
Mr. Satyam Lama
Ms. Sagarika Sarkar

....for the respondent no.3.

Mr. Deborshi Dhar

...for the Corporation.

Mr. Subir Kumar Saha
Mr. Kumar Shantanu

.....for the State.

1. The petitioners are aggrieved by an order dated May 31, 2024, passed by the Commissioner, Siliguri Municipal Corporation. By the said order, the building plan sanctioned in favour of the petitioners was cancelled and the construction made was held to be unauthorized. The reason for such cancellation was suppression of an order of injunction in respect of a passage, the width of which, according to the respondent no. 3 measured around 9 ft. A suit is

pending with regard to the said passage. The respondent no. 3 had challenged such grant of sanction by the Siliguri Municipal Corporation in a writ petition. The writ petition was disposed of with a direction upon the corporation to decide the complaint of the respondent no. 3.

2. The learned advocate for the petitioners submits that the specific case of the petitioners in the written statement was that the passage measured around 6 ft. Relevant documents and deeds have been relied upon in support of such contention. It is stated that the respondent no. 3 was also a signatory to some of such deeds in which the width of the passage was mentioned as 6 ft. The corporation, however, found that the injunction was in respect of 9' ft. wide passage. Thus, the existing passage, on measurement, was found to be around 6.29 ft. The corporation, was of the view that 3 ft. extra area of the alleged common passage, had been brought within the sanction plan. Such suppression was taken note of and in exercise of power under Section 286 of the West Bengal Municipal Corporation Act, 2006, the commissioner passed an order cancelling the sanction on the ground that the same was obtained by material misrepresentation and the construction made so far would be treated as illegal and unauthorized.

3. Learned advocate for the petitioners submits that when the coordinate Bench directed the corporation to consider the complaint filed by the respondent no. 3, the corporation was also asked to ascertain whether any material gain had resulted from such suppression. Such issue was not decided by the corporation. It is next submitted that the measurement of the passage was not as stated by the commissioner. The suit had not been decided. The commissioner was not in a position to determine the measurement of the passage. It was beyond his authority. It is submitted further that no opportunity of hearing was granted to the petitioners. The petitioners also submit that they were not aware of the orders passed in the suit as they were substituted upon demise of their father.
4. Mr. Sarkar, learned advocate for the respondent no. 3, submits that the pendency of the suit and the order of injunction should have been brought to the notice of the corporation before any sanction was prayed for. The construction was being carried out in violation of the order of status quo. The corporation rightly cancelled the plan which was obtained by misrepresentation. Whether there were admissions by the respondent no. 3 with regard to the width of the passage or whether the respondent no. 3 was a signatory to documents where the passage has been

shown as 6 ft. wide, were matters of evidence which would be decided in the suit.

5. The respondent no. 3 as plaintiff, alleged in the Title Suit No. 20 of 2007 that construction was going on by encroaching a common passage. The common passage has been described in the schedule B.

Schedule 'B' is quoted below:-

"Suit Passage"

All that common road/common passage measuring 63' feet length x 9' feet wide situated on the southern side of the land of the defendant. Situated on plot no.341, recorded under khatina (sic) no. 429/5, Mouza – Silguri, J.L. No. 88, Police Station at present prodhan Nagar. Sub-Division & Sub-registry office – Siliguri, Dt. Darjeeling."

6. In the written statement, the petitioners categorically stated that the common passage was 6 ft. wide and the respondent no. 3 was forcefully demanding the same to be 9 ft. The excess 3 ft. belonged to the petitioners. It appears that status quo over Schedule B property had been granted by the learned civil court. Thus, under no circumstances could any construction be continued over the above schedule B property till the suit was finally adjudicated and the exact width of the passage was determined on evidence.
7. On the other hand, as considerable construction had been made on the basis of the sanction and if ultimately it is found that the passage was not 9 ft.

wide as claimed by the respondent no.3, demolition of the structure prior to such determination will result in irreparable loss and injury and the situation will become irreversible.

8. Under such circumstances, the order cancelling the plan and holding that the construction was illegal and liable to be demolished shall be kept in abeyance till the civil suit is decided. It is made clear that in view of the order of status quo and cancellation of the plan, no construction shall be permitted.
9. The writ petition is accordingly disposed of.
10. Upon disposal of the suit or if any further order is passed by the civil court with regard to the said passage, parties will be at liberty to approach the corporation for necessary orders and reliefs. The order of cancellation of sanction will take effect if the suit succeeds and it is held that the passage is 9 ft. wide. If the petitioners succeed in the suit, then the order impugned shall stand revoked or withdrawn and the petitioners shall be at liberty to construct according to the sanction.

All the parties are directed to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)