

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
ORIGINAL SIDE

APO/11/2024
GA/1/2024
WPO/1836/2023.

GREAT EASTERN RETAIL PRIVATE LIMITED.
VS
THE KOLKATA MUNICIPAL CORPORATION AND ORS.

BEFORE:

The Hon'ble JUSTICE ARIJIT BANERJEE
The Hon'ble JUSTICE GAURANG KANTH
Date : 28th February, 2024.

Appearance:
Mr. Malay Kr. Ghosh, Adv.
Mr. Sakya Sen , Adv.
Mr. Indrajit Bhattacharjee, Adv.
Mr. Pradip Kr. Saha, Adv.
Mr. Moloy Roychowdhury, Adv.
...For Appellant.
Mr. Biswajit Mukherjee. Adv.
Mr. Gopal Chandra Das, Adv.
For the KMC.
. Mr. Jaydip Kar, Sr. Advocate,
Mr. Arijit Bardhan, Adv.
Mr. Soumyadip Mishra, Adv.
Mr. Gopal Chandra Halder, Adv.
Mr. T. Dey, Adv.
For respondent no. 5.
Mr. D. Mukherjee, Adv.
Ms. Kalpita Paul, Adv.
For the State.

The Court:- This appeal is directed against a judgment and order dated December 13, 2023 whereby the writ petition of the appellant herein being WPO/1836/2023 was disposed of by a learned Judge of this Court.

The appellant/writ petitioner is the owner of premises no. 10/1, Rowland Road, Kolkata-700 020. The private respondent is the owner of premises no. 11, Rowland Road, Kolkata- 700 020 which is an adjacent property. It appears that the appellant made a representation to the competent authority in Kolkata Municipal Corporation (in short KMC) for cancellation of the building plan sanctioned in favour of the private respondent on the ground that the same was obtained by practising fraud and making misrepresentation. Being aggrieved by non-consideration of such representation, the appellant approached the learned single Judge for a direction on KMC to dispose of the representation in accordance with law.

It was drawn to the attention of the learned single Judge that a declaratory suit has been filed by the writ petitioner before the appropriate civil Court concerning approximately 1 cottah of land which, the writ petitioner says it is entitled to and according to the writ petitioner the private respondent is wrongfully claiming.

The private respondent submitted before the learned single Judge by reference to the conveyance deed executed in favour of the writ petitioner by the former owner of premises no.

10/1, Rowland Road, Kolkata that the disputed portion was never sold to the writ petitioner.

KMC submitted that it was not possible for it to decide the issue at this stage as the dispute is with regard to a portion which is already the subject matter of a title suit.

It was further submitted by the writ petitioner that the disputed portion was shown in the site plan by the private respondent for obtaining sanction of the building plan in his favour. It was submitted that if the sanctioned plan is permitted to be acted upon and construction is made, the effect would be irreversible and the writ petitioner would suffer irreparable injury.

The learned Judge was of the opinion that the civil Court will decide the ownership of the disputed portion of the subject premises. The learned Judge disposed of the writ petition with the following observation and direction.

“The petitioner has a further complaint. It has been submitted that trees are being felled illegally. The private respondent submits that the trees are being felled pursuant to the order passed by the Kolkata Municipal Corporation and the forest department. It has been brought to the knowledge of the Court that a separate writ petition with regard to the felling of

the trees has been filed at the instance of one Meghdoot Co-operative Housing Society Ltd. and an order was passed by a coordinate Bench of this Court on 25th October, 2023 in WPO No. 1718 of 2023. I have perused the said order passed on 25th October, 2023. It appears that the Court was pleased to direct the parties to file affidavit-in-opposition and the matter has been directed to appear before the appropriate Bench. Fact remains that the trees in question also falls within the disputed one cottah and odd portion of land.

I am of the considered opinion that it will not be proper to direct the Corporation to decide the grievance raised by the petitioner in the representation at this stage. The parties will be at liberty to approach the Corporation only after the declaration of right, title and interest in respect of the disputed portion of the subject property by the learned Civil Court. It is open to the parties to approach the learned Court where the Suit is pending for necessary relief, if so advised.”

Mr. Ghosh, learned senior Counsel representing the appellant/writ petitioner says that all that the appellant wants is that the KMC should consider whether or not the private respondent has shown the disputed area of approximately 1 cottah

in the site plan submitted to KMC and sanctioned by KMC. There was no reason for the learned single Judge to deny the writ petitioner such a relief.

Mr. Kar, learned senior Counsel representing the private respondent has drawn our attention to the plaint filed by the appellant herein in Title Suit no. 1510 of 2023 pending before the Court of the 2nd Additional Civil Judge (Junior Division), Alipore. In particular, he draws our attention to paragraphs 1 and 2 of the plaint which read as follows:

“ 1. That the plaintiff, formerly Great Eastern Appliances Private Limited being a non-government company registered with The Registrar of Companies represented by its director Nirmal Kumar Baid is the absolute owner of all that piece and parcel of land along with a building lying and situated at 10/1 Rowland Road, Kolkata-700 020 containing an area of 16 Cottahs by virtue of a Deed of Conveyance being 9259 of 2006 purchased from the erstwhile owners being Sri Bipin Kumar Vohra son of Shri Jawahar Lal Vohra residing at 135G, Shyama Prasad Mukherjee Road, Kolkata – 700 026 and Smt. Sanjukta Vohra wife of Shri Bipin Kumar Vohra residing at 135G, Shyama Prasad Mukherjee Road,

Kolkata-700 026 more fully and particularly described in Schedule A.

2. Pursuant to such purchase, the plaintiff has been in actual physical possession and occupation of the said land in question to the extent of 14 cottahs, 12 Chittacks and 9 square feet and though the vendors being the said Sri Bipin Kumar Vohra and Smt. Sanjukta Vohra were willing and co-operative about handing over the actual physical possession of the remaining portion of the land measuring about 1 Cottah 3 Chittaks and 7 Square Feet as more fully described in the Schedule B being the suit property herein, the same could not be handed over due to the forced and illegal occupation of the same by one Dipak Kumar Singh residing at 36B, Shakespeare Sarani, Kolkata – 700 017 being the defendant herein and repeated reminders and deliberations have yielded nothing.”

The first three prayers in the plaint are as follows:

“ i. Declaration that the plaintiff has the absolute right, title and interest over the property being all that piece and parcel of land lying and situated at 10/1 Rowland Road, Kolkata – 700 020 containing an area of 16 Cottahs by virtue

of a Deed of Conveyance being 9259 of 2006 and more fully and particularly described in the Schedule A below.

ii. Permanent Injunction restraining the Defendant and/or his men and agents from encroaching upon and/or changing the nature and character of the suit property as more fully and particularly mentioned in the Schedule B below.

iii. A decree of recovery of khas possession from the Defendant in respect of suit property as more fully and particularly described in Schedule B.”

Mr. Kar also draws our attention to the First Schedule to the Conveyance Deed executed in favour of the writ petitioner by his vendor on May 25, 2006, wherein it is stated “ containing an area of 16 cottahs but on actual survey and measurement the said Premises containing an area of 14 Cottahs, 12 Chittacks and 9 Sq. ft. be the same a little more or less ” was being conveyed to the writ petitioner by its vendor.

Mr. Kar submitted with full knowledge that the property that was being conveyed to the writ petitioner measured 14 cottahs 12 chittacks and odd, the writ petitioner accepted the conveyance. He further submitted that the previous owner from whom the writ

petitioner purchased the property, never staked any claim to the portion in respect whereof the writ petitioner is presently raising a dispute. The present writ petition has been filed only to harass the private respondent.

Mr. Mukherjee, learned advocate for Kolkata Municipal Corporation, made essentially the same submission that was made on behalf of the KMC before the learned Single Judge. He says that question of title or encroachment cannot be decided by KMC.

Having considered the rival contentions of the parties and having carefully gone through the order of the learned Single Judge, we are of the opinion that there is no such infirmity in the order impugned which as may warrant interference by us. The writ petitioner is claiming that although sixteen cottahs was purchased by it, about one cuttah and odd was not delivered to it. It now wants to assert its ownership right in respect of that portion. It has filed a suit in 2023, i.e., after 17 years of the property being conveyed to it by the erstwhile owner. It may or may not succeed in the suit. If it succeeds, it can surely assert its rights in respect of such land.

Presently, its grievance is that the private respondent has encroached or is trying to encroach on its land. This is purely a

civil dispute. If so advised, the appellant/writ petitioner would be at liberty to amend its plaint in the civil suit.

Mr. Ghosh, learned senior counsel representing the appellant, says that KMC is not a party defendant in the suit. Hence, the civil Court may not be able to grant appropriate relief. We do not see what stands in the way of the appellant adding the Kolkata Municipal Corporation as a party, if the learned suit Judge so permits. However, this observation will not be construed as a liberty granted by us to the appellant herein to add KMC as a party defendant in the appellant's civil suit pending in the Alipore Court.

On an overall consideration of the facts and circumstances of this case, we are of the view that the nature of the appellant's grievance is such that the same cannot be conveniently redressed by a writ Court. We do not see any error in the order under appeal.

The appeal and the application, accordingly, stand dismissed without any order as to costs.

We clarify that none of the observations made in this order or in the order of the learned single Judge impugned before us shall have any bearing on the civil suit filed by the appellant herein in the Alipore Court. The learned trial Judge shall decide

such suit independently and without being influenced by any observation in this order.

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(ARIJIT BANERJEE, J)

(GAURANG KANTH, J.)

dg/sm