

OD-2

ORDER SHEET
WPO No.157 of 2024
IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
ORIGINAL SIDE

THE KRISHNA RADHA COOPERATIVE
HOUSING SOCIETY LTD. & ANR.
VERSUS
THE KOLKATA MUNICIPAL CORPORATION & ORS.

BEFORE:
The Hon'ble JUSTICE AMRITA SINHA
Date: 28th February, 2024.

Appearance:
Mr. Raghunath Chakraborty, Adv.
Ms. Tanusree Das, Adv.
....for the Petitioners.

Mr. Biswajit Mukherjee, Adv.
Ms. Manisha Nath, Adv.
....for KMC.

Mr. Satyajit Talukdar, Adv.
Mr. Avishek Guha, Adv.
Ms. Akansha Chopra, Adv.
...for KMDA.

The Court:- The petitioners are aggrieved by the act of the Kolkata Municipal Corporation in constructing a compactor allegedly in front of the entrance of the petitioner Co-operative Society. Construction of a building at the land of the Co-operative Society is yet to start. Plan has not yet been sanctioned for raising construction.

The petitioners apprehend that the compactor station would hamper the easementary right of the petitioners. The petitioners also apprehend that there would be pollution on account of accumulation of garbage as well as noise pollution when the machine would be in operation. The petitioners contend that their right to life and the right to enjoy the property would be infringed if the compactor is constructed in front of the petitioners' building. The petitioners refer to the site plan of the area of the petitioners and contend that the compactor is being set up on the projected road.

The petitioners intend to rely upon judgement passed by this Court in support of the submission that if the land is meant for a particular use, the same cannot be used for any other purpose. The petitioners further rely upon provision of Sections 353 & 354 of the Kolkata Municipal Corporation Act, 1980.

An objection filed by the petitioner Co-operative Society is pending consideration before the Municipal Commissioner. Prayer has been made for passing interim order restraining the Corporation from proceeding with the construction of the compactor station.

Learned advocate representing the Corporation opposes the prayer of the petitioners. Reliance has been placed upon a report prepared by four engineers of the Corporation of the Solid Waste Management Department signed on 23.02.2024.

It appears therefrom that the proposal for construction of one modern scientific waste compactor station with set of two compactors on Kolkata Municipal Corporation land was initiated on 28.12.2021. The place where the compactor would be set up was identified and earmarked. It was found that there is a huge open vat along with container's point is situated throughout the road which creates nuisance and health hazard of the surrounding population.

To prevent vector born diseases like malaria, dengue from open vat, modern scientific waste compactor station was very much essential at that place. The proposal was approved by the appropriate authority in June, 2022. The department conducted e tender process and work order has been issued

in September, 2023. Presently, construction of the compactor station is going on. The same is in the interest of the public in general.

It has been mentioned in the report that the construction is being made in accordance with the SWM Rules, 2016 and in compliance of the various directions passed by the National Green Tribunal from time to time. The department intends to make Kolkata a vat-free city and segregation of garbage is to be made at source.

Learned advocate representing the KMDA is yet to receive instruction in the matter.

Upon hearing the submissions made on behalf of the parties and upon perusal of the documents placed before this Court, it appears that at present the place where the compactor station is being constructed is used as an open vat. The same is 5 ft. away from the outer boundary wall of the petitioner's premises. As per the lease deed of the petitioner the construction of the building has to be made leaving 5 ft. Space from the outer boundary wall. The same implies that minimum of 10 ft. distance will remain in between the compactor station and the petitioner's building which is yet to be constructed.

The petitioner contends that the entrance of the petitioner's building may be blocked. As the plan for raising construction is yet to be sanctioned, as such, the petitioner ought to keep in mind the compactor station and thereafter submit the plan proposal for raising construction so that there is no obstruction in free ingress and egress to the petitioner's premises.

The Corporation has adopted the policy to make Kolkata a vat-free city. The same appears to be in the interest of public in general and with a

view to prevent various vector born diseases. The intention of the Corporation is liable to be applauded.

It appears that the apprehension of the petitioner that there will be accumulation of garbage and there may be nuisance and pollution appears to be misplaced. On the contrary, if the open vat is permitted to remain, then there will be chances of spread of filth, garbage, stench and pollution in the area which ought not to be allowed.

In view of the above, the Court is not inclined to interfere in the present case.

Writ petition fails and is hereby dismissed.

Instruction forwarded by the engineers of the Corporation be retained with the records.

Urgent Photostat certified copy of this order, if applied for, be supplied to the parties upon compliance of all legal formalities.

(AMRITA SINHA, J.)