

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
ORIGINAL SIDE

APO/55/2024
WITH
WPO/99/2024
IA NO:GA/1/2024

SANJAY KUMAR DEY
VS
THE KOLKATA MUNICIPAL CORPORATION AND ORS.

BEFORE:
The Hon'ble JUSTICE ARIJIT BANERJEE
AND
The Hon'ble JUSTICE PRASENJIT BISWAS
Date : April 18, 2024.

Appearance:
Mr. Aniruddha Chatterjee, Adv.
Mr. Abirlal Chakravorti, Adv.
...for Appellant
Mr. Arindam Banerjee, Adv.
Ms. Sinthia Bala, Adv.
...for private-respondent No..6
Mr. Mihir Kundu, Adv.
Mr. Sundar Gopal Bhattacharya, Adv.
...for KMC
Mr. Yash Vardhan Deora, Adv.
...for State

The Court: By consent of the parties, the appeal and the application are taken up together for hearing.

The appellant's writ petition being WPO/99/2024, has been dismissed by a learned single Judge of this Court by a judgement and order dated February 29, 2024, which is the subject matter of challenge in this appeal at the instance of the writ petitioner.

The appellant approached the learned single Judge saying that he is the owner of premises no.86/2A, Topsia Road South, Kolkata. He alleged that

the private-respondents are raising construction over his plot of land relying upon a sanctioned plan issued in respect of premises no.86/2C/7, Topsia Road South. He says that he has lodged a complaint before the Municipal Commissioner raising objection to the said construction, but no steps were being taken on the basis of such complaint. He prayed for a direction on the Commissioner of Kolkata Municipal Corporation (in short, "KMC"), to take steps for cancellation of the sanctioned plan.

On behalf of the respondent No.6, it was submitted by learned advocate that his client is the owner of premises no.86/2C/7, Topsia Road South and he is making a construction on his plot of land strictly in accordance with the plan sanctioned by KMC.

A report was produced before the learned Judge by KMC. The learned Judge noted from such report that the department had inspected premises no.86/2C/7, Topsia Road South and has found that construction of a four-storeyed RCC framed structure is in progress and such construction is in accordance with the sanctioned plan for a G+3 storeyed building.

The learned Judge dismissed the writ petition with the following observations:

"From the submissions made on behalf of all the parties, it appears that there is an issue with regard to the identification of the plot of land where the construction is being made. The petitioner claims that the construction is being made over his plot of land at premises no.86/2A, Topsia Road South, whereas the private respondent no.6 and the Kolkata Municipal Corporation submit that the construction is being made over premises no.86/2C/7, Topsia Road South in accordance with plan sanctioned.

With such disputed questions of facts neither the writ court nor the Commissioner will be in a position to adjudicate the issue. In view of the above, the relief claimed by the petitioner cannot be allowed.

It will be open for the petitioner to approach the appropriate forum for relief."

Being aggrieved, the writ petitioner has come up by way of this appeal.

Mr. Aniruddha Chatterjee, learned advocate representing the appellant/writ petitioner, says that he has an innocuous prayer. He has made a representation to the Municipal Commissioner saying that the respondent no.6 has obtained the sanctioned building plan wrongfully and the same should be cancelled. The Commissioner should dispose of such representation in accordance with law.

Mr. Arindam Banerjee, learned advocate representing the respondent no.6, says that there are no material particulars in the representation made by the appellant. He took us through the undated representation, which appears to have been submitted to KMC on January 31, 2024. He says that it will be absolutely futile to ask the Commissioner to consider such representation.

Learned advocate representing KMC, on instruction, says that in the records of KMC there is no land numbered as 86/2A, Topsia Road.

We, as the Writ Court, are not concerned with any title dispute between the parties. Whether or not the private-respondent no.6 is building a house on the appellant's land, is beyond the scope of writ proceedings. Even the Commissioner of KMC cannot enter into such dispute.

We would have directed the Commissioner of KMC to consider the representation of the appellant had we found some particulars in such representation in support of the contention of the appellant that the sanctioned building plan has been “wrongfully obtained” by the private-respondent no.6. There are absolutely no particulars of any alleged fraud and/or misrepresentation or the like in the representation made by the appellant. Excepting a bald statement that the sanctioned plan has been “wrongfully obtained”, there is nothing else. We are not inclined to direct the Commissioner of KMC to consider such a representation, which is *de void* of all material particulars.

We, therefore, see no reason to interfere with the order of the learned single Judge.

The appeal and the connected application are dismissed.

This order will not prevent the appellant from taking such steps as he may be entitled to in law before the appropriate forum.

If any such step is taken, the relevant forum shall pass appropriate orders, in accordance with law, observing the principles of natural justice.

Since we have not called for affidavits, the allegations in the application are deemed not to be admitted by the respondents.

(ARIJIT BANERJEE, J.)

(PRASENJIT BISWAS, J.)