

ORDER SHEET

WPO No.381 of 2024
IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
ORIGINAL SIDE

IQRAMUL HAQUE & ANR
VS
THE KOLKATA MUNICIPAL CORPORATION & ORS.

BEFORE:

The Hon'ble JUSTICE AMRITA SINHA

Date: 9th May, 2024.

Appearance:
Mr. Avirup Chatterjee, Adv.
Mr. Rishov Das, Adv.
...For the Petitioners.

Mr. Biswajit Mukherjee, Adv.
Mr. Swapan Kr. Debnath, Adv.
Ms. Manisha Nath, Adv.
...For the KMC

Mr. D.K. Sengupta, Adv.
Ms. Sweta Saha, Adv.
Ms. Farhin Mustaque, Adv.
...for Respondent no.5.

The Court:- The order passed by the Director General (Building), Kolkata Municipal Corporation on 22.03.2024 in compliance of the direction passed by the Hon'ble Division Bench in APO/38/2024 with WPO/74/2024 and IA NO:GA/1/2024 [Iqramul Haque & Anr Vs. The Kolkata Municipal Corporation & Ors.] is impugned in the instant writ petition.

The Hon'ble Division Bench directed the Director General [Building] to take an independent and informed decision in the matter on the issue as to whether there is any violation of any condition of the sanctioned plan as has been submitted by the appellants which justifies issuance of notice under Section 401 of the Kolkata Municipal Corporation Act, 1980.

The Director General [Building] afforded opportunity of hearing and heard submissions made on behalf of both the parties and ordered that as there was a civil case pending before the learned Court in respect of the said plot of land prior to sanction of the building plan, but the appellant submitted undertaking that there is no civil or criminal case pending which is clearly in violation of the condition of the sanctioned plan, notice under Section 401 of the Kolkata Municipal Corporation Act was continued.

Learned advocate for the petitioners submits that the petitioners, not being the party to the civil case, were not aware of the pendency of the civil case at the time of filing the plan proposed for sanction. It was later that the petitioners came to learn about the pendency of the civil suit.

It appears from the submission on behalf of the petitioners and the private respondents that both claim ownership of the subject premises. Learned advocate representing the private respondents contends that the plot of land is the same and the erstwhile premises no.1724 was re-numbered by the Corporation and the present premises no. is 851. The seller of the petitioners is party to the suit filed by the private respondent no. 5.

According to Section 401 of the Kolkata Municipal Corporation Act, an order of stoppage of work can be passed if plan has been sanctioned contrary to the conditions subject to which such sanction was accorded. In the instant case, sanction was accorded on the undertaking given by the petitioners that no civil or criminal case was pending. It may be that the petitioners were not aware of the civil suit that was pending, but the fact

remains that there is an issue with regard to identification of the plot of land and the seller of the plot is impleaded as defendant in the pending suit.

At this stage, permitting the petitioners to continue with the construction work may lead to further litigation. Third party rights may be created if the construction is permitted to be continued.

Learned advocate representing the private respondent no. 5 submits that an application has already been made before the learned civil Court for adding the petitioners as parties in the said suit.

In view of the above, the Court is not inclined to exercise jurisdiction in the matter.

The writ petition fails and is hereby dismissed.

Affidavit of service filed in Court today be taken on record.

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

(AMRITA SINHA, J.)