

OD-3

ORDER SHEET

APO/188/2023

With

WPO/363/2023

IA NO: GA/1/2024

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
ORIGINAL SIDE

MALATI SAHA

VS.

THE KOLKATA MUNICIPAL CORPORATION AND ORS.

BEFORE:

The Hon'ble JUSTICE ARIJIT BANERJEE

The Hon'ble JUSTICE M.V. MURALIDARAN

Date : 29th January, 2024.

Appearance:

Mr. Ranajit Chatterjee, Adv.

Mr. D.R. Mukherjee, Adv.

Mr. Arijit Dey, Adv.

...for the petitioner

Mr. Alak Kumar Ghosh, Adv.

Mr. Gopal Chandra Das, Adv.

... for KMC

Mr. Satyajit Talukdar, Adv.

Mr. Avishek Guha, Adv.

Ms. Akansha Chopra, Adv.

...for the KMDA & respondent no.5

Ms. Urmila Chakraborty, Adv.

Mr. Ram Nath Dutta, Adv.

...for respondent no.6

Mr. Sayak Ranjan Ganguly, Adv.

Ms. Srijani Ghosh, Adv.

Ms. Indrani Majumder, Adv.

...for the respondent no.8

The Court: This appeal is directed against a judgment and order dated September 20, 2023 whereby the writ petition of the appellants herein being WPO No. 363 of 2023, was dismissed by a learned Judge of this Court.

The disputes between the parties pertain to a shopping complex popularly known as Dakshinapan Shopping Complex in South Calcutta. Three shop rooms in that complex being F-47, F-48 and F-49, on the first floor, were originally allotted to one UP State Brassware Corporation Limited. The complex originally belonged to the Calcutta Improvement Trust. Upon merger of Calcutta Improvement Trust with Kolkata Metropolitan Development Authority (in short, KMDA), KMDA has become the owner of the shopping complex.

UP State Brassware Corporation Limited went into liquidation. It was an Uttar Pradesh State Government Undertaking. Upon its liquidation, its assets and liabilities were passed on to another Government of Uttar Pradesh Undertaking by the name of Uttar Pradesh Export Corporation Limited. Accordingly, the aforesaid three shop rooms were occupied by UP Export Corporation Limited which is the respondent no.7 in this appeal. We are told that UP Export Corporation Limited has been renamed as UP Handicrafts Development and Marketing Corporation Limited (in short, UP Handicrafts) and fresh certificate of incorporation has been issued by the competent authority.

The actual dispute pertains to a corridor/passage measuring approximately 16 sq. metre between shop rooms F-47 and F-48. It appears that the allottee of the said shop rooms had requested Kolkata Improvement Trust (in short, KIT) to permit it to enjoy the said corridor for security reasons since the said shop rooms were located at the extreme corner of that passage. The concerned committee of the erstwhile KIT, adopted a resolution on May 6, 1995 to allow UP Export Corporation Limited (now UP Handicrafts) to use the said corridor without hampering ventilation and lighting subject to payment being made. It transpires that the demand for occupational charge raised by KIT on UP Export Corporation was not paid. However, we are not concerned with the same.

The appellants approached the learned Single Judge with the grievance that UP Handicrafts has blocked the corridor/passage in question by installing rolling shutters and iron grills. No permission from the relevant authority was taken for the same. The same has resulted in interfering with ventilation and lighting insofar as the writ petitioners are concerned. Further, the constructions put up by UP Handicrafts are blocking the exit from the building in question and in case of a fire accident, it may well cause casualties.

Learned advocate for UP Handicrafts says that the installations, which are being complained of by the present appellants, have been there since 1994. This is disputed by learned advocate for the appellants.

The learned Judge called for a joint inspection report from KMDA and Kolkata Municipal Corporation (in short, KMC). Such report was filed. The learned Judge perused such report and found that there is no mention about any unauthorised construction at the subject premises. The learned Judge dismissed the writ petition with the following observations:

“It appears that the petitioners are aggrieved by the act of the respondent authorities in permitting the private respondent to enjoy the corridor space and seeks removal of the encroachment. Allegation that the Building rules have been violated does not appear to be proper.

Dispute regarding encroachment and its regularization ought to be resolved before the competent forum. High Court sitting in the writ jurisdiction is not the competent authority to decide upon encroachment.

In view of the above, no relief can be granted to the petitioners in the instant writ petition. Writ petition fails and is hereby dismissed.

It will be open for the petitioners to seek remedy before the appropriate forum in accordance with law, if so advised.”

Being aggrieved, the writ petitioners are before us by way of this appeal.

Mr. Chatterjee, learned advocate appearing for the appellants, drew our attention to some of the provisions of the Kolkata Municipal Corporation Building Rules, 2009 and argued that it is mandatory to keep a hindrance-free corridor in a shopping complex, of the

specifications mentioned in the Building Rules. Such provisions have been flouted in the present case. It is the duty of KMC to take appropriate steps in the matter.

We find from the annexures to the stay application that representations have been made by the appellants through their learned advocate, addressed to amongst others, the Municipal Commissioner. One such representation dated January 23, 2023 is at page 69 of the stay petition.

We are of the view that it will not prejudice anybody if KMC disposes of the aforesaid representation of the appellants made through their learned advocate.

Accordingly, we direct the Municipal Commissioner or any responsible officer authorised by him to dispose of the appellants' representation dated January 23, 2023, in accordance with law and the applicable rules and regulations, by a reasoned order, within a period of six weeks from the date of communication of this order by the appellants to the Municipal Commissioner, after giving an opportunity of hearing to the appellants, UP Handicrafts and any other concerned party or their authorised representatives. If the officer concerned is of the opinion that the Fire Services Authority should be heard, notice of hearing could also be issued to the Fire Department. The order to be passed by the Municipal Commissioner or the officer authorised by him shall be communicated to the parties within a week from the date of the order. If

the Municipal Commissioner finds that there is merit in the grievance of the appellants herein and UP Handicrafts has done something contrary to the provisions of the KMC Act or the rules and regulations framed thereunder, appropriate remedial steps will be taken by him in accordance with law.

Mr. Chatterjee submits that repeatedly his clients have been asking for certified copy of the concerned building plan from the concerned authority since March, 2023. The concerned authority should supply a certified copy of such plan to the appellants upon payment of applicable charges.

The appeal and connected application are accordingly disposed of.

Since we have not called for affidavits, the allegations in the stay petition are deemed not to have been admitted by the respondents.

(ARIJIT BANERJEE, J)

(M.V. MURALIDARAN, J.)