

OD-5

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
ORIGINAL SIDE

WPO/1875/2023

JUNAID ASLAM
VS
THE KOLKATA MUNICIPAL CORPORATION AND ORS.

BEFORE:
THE HON'BLE JUSTICE AMRITA SINHA
Date : 2ND JANUARY, 2024.

Appearance :
Mr. Amit Kumar Raidani, Adv.
Ms. Anchita Singh, Adv.
...for petitioner.

Mrs. Sima Chakraborty, Adv.
Mr. Fazlul Haque, Adv.
...for KMC.

Mr. Anand Farmania, Adv.
Mr. Manoj Kr. Mondal, Adv.
...for State.

The Court :-The petitioner no. 1 claims to be the owner of a flat in the first floor of the premises no.10, Fazlul Haque Sarani, W-64, Br-VII of the Kolkata Municipal Corporation.

Allegation is that the private respondent nos.11 to 14 are illegally occupying a flat on the 4th floor of the subject premises and are making illegal and unauthorized construction and not permitting the petitioner the access to the roof and common areas. Complaint was lodged before the Corporation but the same is alleged to be kept pending.

Learned advocate representing the Corporation relies upon the instruction forwarded by the engineers of the concerned Borough which mentions that departmental inspection revealed that no new construction is being made at present. Fourth floor and roof of the G+IV storied building is under lock and key.

Report forwarded by the Officer-in-Charge, Beniapukur P.S. signed on 02.01.2024 mentions that on receipt of the complaint from the writ petitioner, the matter was enquired and it revealed that the private respondent nos.11 to 14 are occupying the flat for more than 18 years.

The private respondents claim that the deed of conveyance in their favour was registered in the month of February, 2004 being Deed No.04184.

From the submissions made on behalf of the parties and upon perusal on the instructions forwarded by the official respondents, it appears that the dispute which has been sought to be raised before this Court is primarily a civil one. The police found that there was a dispute with regard to common passage and the access to the roof. The Corporation or the police will not be the appropriate authority to adjudicate the issue.

It will be open for the petitioner to approach the appropriate civil forum for declaration of right, title and interest of the common areas and the roof. No further relief can be granted to the petitioner in the instant writ petition.

Writ petition stands disposed of.

Instructions forwarded by the Corporation and the Police be retained with the record.

Affidavit of service filed in Court today is 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.)