

Item No. 38
24.11.2025
Court. No. 6
GB

C.O. 1180 of 2025

Shiv Prasad Dubey
Vs.
Kolkata Metropolitan Development
Authority & Ors.

Mr. Shibaji Kumar Das,
Ms. Parbati Mondal

...for the Petitioner.

Mr. Satyajit Talukdar,
Mr. Arindam Chatterjee

...for the K.M.D.A.

Mr. Partha Ghosh,
Mr. Rishav Kumar Thakur

...for the Opposite Party Nos.2 & 3.

1. By the order dated March 4, 2025, the learned Civil Judge (Junior Division), 3rd Court at Howrah rejected an application for local inspection filed by the plaintiff in Title Suit No.1162 of 2018. The plaintiff is the petitioner. The plaintiff is enjoying an order of temporary injunction.
2. The learned court was of the view that, as the plaintiff was alleging encroachment by construction of a garden cum island in front of two shop rooms, which were in the possession of the plaintiff, the plaintiff ought to have prayed for local investigation and not local inspection. The plaintiff is aggrieved by the rejection of the application for local inspection.
3. It is submitted that local inspection is necessary to ascertain the exact position of the garden cum island . Other local features are also required to be ascertained.

4. Mr. Das, learned advocate for the petitioner submits that the suit was originally filed for declaration and permanent injunction. A decree for declaration that the plaintiff was a licensee in respect of the suit properties and a further declaration that the defendants did not have any right to interfere with the possession of the suit properties. The suit property comprised of two shop rooms. The plaint was amended and certain pleadings were sought to be incorporated with regard to the alleged violation of order of injunction and construction of a garden cum island in front of the shop rooms.
5. According to the plaintiff, the said shop rooms prevented the ingress and egress of the customers and a prayer for mandatory injunction was also incorporated in the prayer portion of the plaint. The plaintiff, inter alia, prayed for a direction of removal of the said garden cum island and restoration of the space in front of the shop rooms, to its original position.
6. The learned court was of the view that the plaint case was based on encroachment by the defendants and as such, the local inspection would not yield any fruitful result.
7. Mr. Das, submits that this was an incorrect observation of the learned court. The plaint case was that, a construction of the garden cum island in front

of the shop rooms was interfering with the ingress and egress of the customers.

8. Mr. Talukdar, learned advocate for the opposite party no.1 submits that the local inspection is being prayed for only to fish out evidence.
9. Mr. Thakur, learned advocate for the railway submits that the petitioner does not have any right to continue with the shop rooms as the licences have long expired. They are enlarging the scope of the suit by making such frivolous prayers.
10. Having heard the rival contentions of the parties, this Court finds that, originally the suit was for declaration and permanent injunction. The prayers were for a declaration that the plaintiff was a licensee in respect of the suit premises under the defendant no.1 and further declaration that, the defendants did not have any right to interfere with the plaintiff's possession of the suit premises. An order of injunction was passed in favour of the plaintiff, restraining the defendants from interfering with the possession. It is submitted that the plaintiff is still in possession but the defendant No. 1 violated the order of injunction.
11. Although it is alleged that the garden cum island was constructed in violation of the order of injunction, this Court does not find any proceeding to have been initiated alleging such violation. Thus, it is for the plaintiff to prove his positive case of blocking the ingress and egress, etc., in support of the prayer for

permanent injunction and also the prayer for mandatory injunction. If a commissioner has to report on the existence of such garden-cum-island, allowing local inspection in this regard will amount to permitting fishing out evidence. The court had rightly rejected the application, even if the reasoning was not happy. The final order of rejection is correct. The existence of the garden-cum-island can be proved by leading evidence. Such prayer for local inspection has not been made in aid of any proceeding under Order 39 Rule 2A of the Code. Moreover, the garden-cum-island is not a part of the suit property.

12. Accordingly, the application is dismissed.

13. Parties are directed to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)