

28.04.2025
Court No.13
Item No. 14
sp/AP/pk

MAT 945 of 2023

**Mira Chaudhuri & Ors.
Vs.
Kolkata Municipal Coporation & Ors.**

Mr. Alok Kumar Ghosh, Senior Advocate
Mr. Tanmoy Sett,
Mr. Pran Gopal Das
..for the appellants.

Mr. Biswajit Mukherjee,
Mrs. Sima Chakraborty
..for the KMC.

1. The instant appeal is directed against judgment and order dated 4th May, 2023 passed by a Single Bench of this Court. By the said order the writ petition was disposed of with certain observations and a direction upon the Director General (Water Supply), KMC to take a decision after consulting record and making an inspection, if necessary, whether the water dispensing stand post, at the time of its installation had the approval of the Mayor-in-Council and whether it is necessary to obtain such approval at the time of shifting of the said stand post.

2. The brief facts of the case are that the original writ petitioner was a doctor who purchased premises No. 47B, Turf Road, Kolkata- 700025 sometime in the year 2007. After purchase of the property, the writ petitioner applied before the KMC

authorities for issuing a sanction plan for construction of new premises thereat. That sanction plan was accorded to the writ petitioner sometime in the year 2009. The building was constructed in the year 2011.

3. A water dispensing stand post and/or a hydrant was admittedly in existence on the north-western side of the premises of the writ petitioner much before the date of purchase of the property. The same is evident from two several reports dated 28th September, 2013 and 27th March, 2023 filed by the KMC before the Single Bench. The petitioner initially prayed before the authorities for shifting the stand post which was in front of the constructed garage in 2009. The KMC in deference to the petitioner's request shifted it to a position exactly in front of the boundary wall on the north western side of the petitioner's premises. From the photographs filed by the writ petitioner and those filed by the KMC before the Single Bench, the exact location of the said stand post appears to be as indicated above.

4. The writ petitioner at prayer (a) to the writ petition had asked for mandamus on the KMC to shift the said water stand post/hydrant/tap to another place.

5. The KMC, as already stated hereinabove, filed two several reports before the Single Bench. The writ petitioner filed objections thereto. In the objections, the writ petitioner has changed his stand. He now wants the stand post to be removed completely. This is contrary to prayer (a) of the writ petition.

6. The KMC in the said two reports and in a document produced in Court today, indicates that the stand post/tap has existed for well over 60 years. In the KMC Act of 1951 Section 266 mandated upon the Corporation to erect sufficient convenient bathing platform and public stand post for supplying free of charge filtered water for bathing and for domestic purposes. It is most likely in terms of this Section that the said stand post was erected.

7. It further transpires from the reports and is an admitted position between the parties that there is a slum located 6 ft. of the premises in question. The lane adjoining the north western side of the premises, in fact, leads to a slum. Counsel for the writ petitioner would argue that the slum is at a distance of 40 ft.

8. The KMC's stand in the two reports file before the Single Bench is that water supply from the said stand post caters to the needs of several residents of

the slum as well as tenants and other persons living in the vicinity.

9. On the directions of the Single Bench, attempts are made by the Director General, Water Supply of the KMC to examine as to whether the stand post could be shifted from its existing place to another location. The Director General in no uncertain terms stated that such shifting would have the effect of obstructing passage of people and cycle rickshaws and other smaller vehicles in the said by-lanes around the petitioner's premises.

10. Mr. Alok Kumar Ghosh, learned senior counsel for the appellant would argue that in terms of Section 236 of the KMC Act of 1980 the Corporation is obliged to provide supply of wholesome water either in pipes or by deep tube wells or otherwise to huts and busties for domestic purpose. He argues that in view of the statutory obligation cast on the KMC in terms of Section 236 and 237, the KMC is duty bound to remove the said stand post and ensure pipe water supply to the houses and or settlements within the slum in question.

11. It further transpires from the arguments advanced by the parties as also the reports in question filed by the KMC that the stand post was

meant for supply of drinking water to the public at large.

12. Having heard Mr. Alok Kumar Ghosh, learned senior counsel for the appellant and Mr. Biswajit Mukherjee, learned counsel for the KMC, this Court is of the view that the appellant purchased the property in question knowing fully well and seeing with his own eyes the existence of the subject stand post for dispensing water. The KMC has obliged and acceded to the request for the writ petitioner for shifting of the said stand post from the earlier position, to the existing position to remove the obstruction and permit free ingress and egress of the writ petitioner's garage.

13. The stand post, evident from the pictures annexed to the paper book filed in the appeal particularly at Page 150, clearly shows that the water spout is pointed away from the petitioner's premises. It is clear before this Court that the said stand post is a vital lifeline for the local residents whether they are slum dwellers or tenants residing thereat.

14. Given the fact that the said stand post has been in existence since before the petitioner purchased the property, it would be grossly unfair

on the part of the writ petitioner to now demand that the stand post must be removed.

15. Insofar as the other statements in the objections filed to the reports of the KMC that there is a defunct tube well on the other side of the writ petitioner's premises and the existence of other stand post and that the same can be revived to ensure supply of water to the local residents of the slum, this Court is of the view that the same are disputed questions of fact which cannot be gone into by a writ court. The Single Bench has been quite indulgent to the writ petitioner's request from the year 2013.

16. The sight of people bathing in front of the gate of the petitioner's premises may indeed be an eyesore and the petitioner's family and his guest and relatives may face inconvenience in entering and exiting their premises. The petitioner must be deemed to have been prepared for such eventuality at the time he purchased the property.

17. Overwhelming public interest in maintaining the stand post for supply of drinking water to the public at large has an overriding effect on an individual private interest. While this Court finds that there is absolutely no obstruction whatsoever to the free ingress and egress to the petitioner's

premises, the nuisance value of people taking water from the said stand post or bathing thereat is a common reality in the city of Kolkata specially in areas adjoining slums. The availability of free water and air is a right to life recognised as a fundamental right under Article 21 of the Constitution of India.

18. In the facts and circumstances of the aforesaid case, this Court is not inclined to accept the submissions of the learned writ petitioners/appellants. Insofar as the portion of the impugned order which directed enquiry into the existence of the stand post and since when and as to whether the permission of the Mayor-in-Council is required even for shifting a stand post and water hydrant is quite unnecessary in the opinion of this Court.

19. The facts available do not warrant any further technical or statutory enquiry. Suffice it to say that it is common ground between the parties that the water stand post/hydrant existed for a substantial period of time before the petitioner purchased the property.

20. In view of the above, this Court is not inclined to entertain the appeal.

21. According, the instant appeal is dismissed. In view of dismissal of the appeal, connected pending application is also dismissed.

22. There shall be no order as to costs.

(Rajasekhar Mantha, J.)

(Ajay Kumar Gupta, J.)