

09.06.2025
Court No.13
Item No.20
AP

**FMA 629 of 2025
With
CAN 1 of 2025**

**The Municipal Commissioner,
Kolkata Municipal Corporation and Ors.
Vs.
Shri Subir Roy and Ors.**

Mr. Alok Kr. Ghosh
Mr. Atis Kumar Biswas
Ms. Manisha Nath

... for the Appellants/KMC.

Mr. Supratim Dhar, Senior Advocate
Mr. S.B. Chakraborty
Mr. T. Datta Gupta
Ms. R. Ghosh
Mr. Sourav Sardar

... For the Respondent No.1.

1. The instant appeal is directed against an interim order dated 9th July, 2024 passed a Single Bench of this Court in WPA 5596 of 2024.

2. The case of the writ petitioner before the Single Bench is that he was running a brass utensil shop near the Kalighat Temple Road. The Single Bench has recorded that the shop room had two entrances, one from the adjacent footpath and another from the Kali Temple Road.

3. After construction of an elevator for the access of pilgrims to the Kalighat Temple Sky Walk, the visibility of the petitioner's shop room and the access to the same to some extent by the public at large has been restricted. The writ petition was filed seeking compensation from

the Kolkata Municipal Corporation and also for alternative accommodation.

4. The learned Single Bench, based on a video produced by the writ petitioner, found that the writ petitioner was entitled to compensation and appointed a valuer to assess the loss of business of the writ petitioner.

5. This Court is of the view that a claim for loss of business due to a public utility service and assessment thereof cannot be decided under Article 226 of the Constitution of India. There are also questions of maintainability of the writ petition that may be required to be gone into along with other grounds. The quantum decided by the valuer would be invariably disputed by the KMC.

6. In that view of the matter, this Court is of the view that the grievances of the writ petitioner raised in the writ petition may be agitated in an appropriate civil proceeding in accordance with law.

7. Permitting the writ petitioner to file a civil suit shall not be treated as a decision on the maintainability of such suit. The same shall be independently considered by the Civil Court in accordance with law.

8. The impugned order is not sustainable either in fact or in law and the same is, therefore set aside. WPA 5596 of 2024 shall stand dismissed.

9. Accordingly, FMA 629 of 2025 is allowed and disposed of.

10. Consequently, all connected pending applications, if any, is also disposed of.

11. There shall be no order as to costs.

12. All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

(Rajasekhar Mantha, J.)

(Ajay Kumar Gupta, J.)