

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

WPA 19553 of 2019

Smt. Sikha Chowdhury

Vs.

The Kolkata Municipal Corporation & Ors.

For the Petitioner	:	Mr. N. C. Bihani, Sr. Adv., Mr. Soumyajit Ghosh, Ms. Shreejita Sen.
For the KMC	:	Mr. Alak Kumar Ghosh, Sr. Adv., Mr. Gopal Chandra Das.
For the Pvt. Respondent	:	Mr. Jit Roy, Mr. Satyajit Senapati.
Hearing concluded on	:	28.07.2025
Judgment on	:	14.08.2025

Shampa Dutt (Paul), J.:

1. The writ application has been preferred praying for direction upon the respondent authority to quash the building plan sanctioned in favour of the respondent, Ram Gupta and pass necessary direction for demolition of the construction made vide the said sanction.
2. Written notes has been filed by the Kolkata Municipal Corporation.

3. The petitioner's case in short is that the petitioner became the owner of the entire second floor of the premises together with undivided proportionate interest in the common areas and facilities appurtenant thereto including the roof of the building for and at a consideration, by way of a registered deed of conveyance dated July 12, 2007.
4. It is the contention of the petitioner that said Ram Gupta, respondent no. 9 herein has now made a construction **above the second floor** (second floor was purchased by the petitioner) by obtaining sanction plan from the Kolkata Municipal Corporation by suppressing material facts and declaring that he is the sole and absolute owner of the premises.
5. It is admitted that Ram Gupta was the owner in respect of the ground floor of the premises and also that, he was the **original owner of the property. Admittedly, the said respondent/Ram Gupta being the owner of the premises had initially constructed a two storied building, wherein he had sold the first floor to one Asim Chakraborty and the second floor to the petitioner, retaining the ground floor for himself.**
6. The petitioner's contention is that as the respondent has now made a construction above the second floor, the stability of the building has been compromised and the petitioner is unable to use it as a terrace/roof.
7. It appears, that admittedly **the private respondent obtained a sanction plan in accordance with law** from the Kolkata Municipal

Corporation to make construction above the second floor and as such above the said second floor, now there is third floor and above that there is a terrace/roof which is a common space of the building. **As such the right of the petitioner has not been compromised in any manner** whatsoever.

8. In a previously instituted writ, by the petitioner, the High Court had directed a hearing to be conducted and a reasoned order has been passed by the Special Municipal Commissioner (Revenue), Kolkata Municipal Corporation wherein it has been specifically held that **the construction made by the respondent above the second floor is on the basis of a valid sanctioned plan issued by the Kolkata Municipal Corporation.**
9. The petitioner has also initiated a civil suit before the **Civil Court** wherein the Civil Court while disposing of the temporary injunction **permitted the respondent herein to construct above the roof of the second floor as per valid sanction plan.**
10. This Court finds that there is prima facie no misrepresentation for obtaining the said valid sanction plan. Regarding the right of the petitioner in the undivided proportionate interest in the common areas and facilities **including the roof of the building,** the same is not compromised, in view of the fact that **a roof still exists and the petitioner has access to the same, as per her deed.**
11. It is thus directed that the respondent shall not obstruct the user of the roof above the third floor and other common space, considering that all common portions including the terrace is to be

within clear access of all the owners/occupants of the respective flats in a building .

- 12. WPA 19553 of 2019 is accordingly disposed of.**
- 13.** All connected application, if any, stands disposed of.
- 14.** Interim order, if any, stands vacated.
- 15.** Urgent Photostat certified copy of this judgment, if applied for, be supplied to the parties, expeditiously after complying with all necessary legal formalities.

(Shampa Dutt (Paul), J.)