

February 09, 2022
ARDR
(11 & 12)

WPA 17036 of 2021
With
WPA 9560 of 2020

Fabworth Promoters Private Limited & anr.
Vs.

The Kolkata Metropolitan
Development Authority & ors.

Mr. Saktinath Mukherjee, Sr. Adv.,
Mr. Surojit Nath Mitra, Sr. Adv.,
Mr. Arindam Banerjee,
Mr. Pramit Bag,
Ms. Alakananda Das,
Ms. Rituparna Chatterjee,
Ms. Srijita Ghosh,

...for the petitioners.

Mr. Satyajit Talukdar,
Mr. Abhishek Sarkar,

...for the KMDA.

Mr. Alok Kumar Ghosh,
Mr. Swapan Kumar Debnath,

...for the KMC.

Re : WPA 9560 of 2020

Learned counsel for the petitioners submits that
he has instructions to withdraw the writ petition.

In view of the above, the writ petition being WPA
9560 of 2020 is dismissed for non-prosecution.

There shall be no order as to costs.

Re: WPA 17036 of 2021

The petitioners have primarily challenged the
demand notice issued by the Kolkata Metropolitan
Development Authority (in short KMDA) on 24th
October, 2016.

The petitioners being the highest bidder in the
auctions floated by the KMDA for construction of a 5 or

7 star rated hotel on the demised premises, deed of lease for a period of 99 years with the option of renewal for similar period was executed in favour of the petitioners by the KMDA on 28th September, 2007, possession of the premises being handed over on the same date.

It is contended on behalf of the petitioners that the petitioners paid lease rent to the KMDA to the tune of about Rs.190 crores and a further sum of Rs.12.5 crores was paid for getting the building plan sanctioned. Pursuant to an application filed by the petitioners before the Kolkata Municipal Corporation (in short KMC) for issuance of modified building plan, the KMC raised a demand on 24th October, 2016 to the tune of Rs.39759137/- which includes development charge and labour welfare cess on building sanction plan.

It is submitted on behalf of the petitioners that the demand of the KMDA has been secured by the petitioners by furnishing bank guarantee which is being periodically renewed.

In view of the primary challenge against the demand notice dated 24th October, 2016, this Court is of the view that there should be an interim stay of execution of the said notice till 31st May, 2022 or until further orders, whichever is earlier.

It is submitted that the hearing before the Senior Law Officer of the KMDA with regard to justifiability of the demand raised by the KMC on 24th October, 2016 was stayed by this Court in the earlier writ petition being WPA 9560 of 2020. Such issue being before this Court for consideration in the present writ petition, the hearing before the Senior Law Officer, KMDA be stayed till 31st May, 2022 or until further orders, whichever is earlier.

Upon consideration the submission made by the parties and material on record, this Court is of the view that exchange of affidavits is necessary for proper adjudication of the matter.

Accordingly, affidavit in opposition be filed within six weeks from date. Affidavit in reply be filed within a fortnight thereafter.

On prayer of the learned counsel for the KMDA, the issue of maintainability be kept open.

Let the matter go out of list for the time being.
Liberty to mention.

(Suvra Ghosh, J.)