

OD-17

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
ORIGINAL SIDE

WPO(P)/1/2024
SK. MAHBUB HOSSAIN
VS.
THE STATE OF WEST BENGAL & ORS.

BEFORE :

THE HON'BLE THE CHIEF JUSTICE T.S. SIVAGNANAM
And
THE HON'BLE JUSTICE HIRANMAY BHATTACHARYYA
Date : 23rd February, 2024

Appearance :
Mr. Mainak Bose, Adv.
Ms. Anjushri Mukherjee, Adv.
... for petitioner
Mr. Ashoke Kr. Chakraborty, Ld. ASG
Mr. Sukanta Chakraborty, Adv.
Mr. Tirthapati Acharyya, Adv.
...for respondent no.2
Mr. Alak Kr. Ghosh, Adv.
Mr. Arijit Dey, Adv.
...for KMC
Mr. Amitesh Banerjee, Sr. Adv.
Ms. Ipsita Banerjee,
...for the State

The Court : We have heard learned Counsel for the parties.

By this Public Interest Litigation, the petitioner has raised an important issue with regard to illegal construction made on properties which are Thika property, Wakf property and enemy property. Prima facie the petitioner has

been able to demonstrate before this Court that construction on the following properties has been made and the building is yet to be occupied.

- a) 170/S/47, Keshab Chandra Sen Street, Ward no. 37, Borough – V, Kolkata – 700009 (Enemy Property) ;
- b) 147/H/25, Keshab Chandra Sen Street, Ward no. 38, Borough – IV, Kolkata – 700009 (Thika Property) ;
- c) 155/H/3, Keshab Chandra Sen Street, Ward no. 38, Borough – IV, Kolkata – 700009 (Waqf Property) ;
- d) 135/H/2/2, Keshab Chandra Sen Street, Ward no. 38, Borough – IV, Kolkata – 700009 (Thika Property) ;

The learned Additional Solicitor General appearing for the second respondent, the Estate Officer and Custodian of the property being No.170/S/47, Keshab Chandra Sen Street, Ward no. 37, Borough – V, Kolkata – 700009, which is an enemy property, on instruction submits that when officers of the second respondent had gone on an inspection of the property of 170/S/47, 23 Keshab Chandra Sen Street, Kolkata they were beaten up and a criminal complaint has been lodged. If this be true, it is a very serious matter.

In the writ petition there is a specific allegation made against one Ujjal Sarkar, who is Executive Engineer of Borough IV and V, Kolkata Municipal Corporation and he has been impleaded by name as the 17th respondent in the writ petition. There is also allegation that the 18th and 19th respondents have colluded with the 17th respondent in perpetrating an illegality. The 20th respondent who is said to be an activist, who is said to have reported about this

illegality by addressing the authorities on several occasions and also in the social media but with no result.

In the light of the above, the Kolkata Municipal Corporation shall carry out sealing of the aforementioned four properties on 24th February, 2024 without fail and action taken report be submitted on the next hearing date. The Officers of the Kolkata Municipal Corporation shall also inspect the properties in serial nos. (ii), (iv), (vi), (vii), (viii) and (x) as given in paragraph 7 at page 7 of the writ petition and file a report as regards the character of the classification of the land, whether there has been any change of the classification of the land, whether any building plan approval was granted and if granted, whether the building has been put up in accordance with the sanctioned plan.

All these details should be set out in a comprehensive manner in a report in the form of an affidavit duly supported by all documents.

We direct the Estate Officer and Custodian of enemy property to file a report with regard to the property in serial no.(i) above.

Since an allegation has been raised in the writ petition that illegal constructions have been raised in the properties which has been recorded as Thika properties and Waqf properties, this Court feels that report should be called for from the Controller, Thika Tenancy and the Chairman, Board of Waqf respectively in this regard. We, accordingly, direct the Controller, Thika Tenancy, being the 13th respondent, to submit a report in respect of the premises as mentioned under serial nos.(ii), (iii), (iv), (vii), (viii) and (ix) with regard to status of such property and if such properties are thika properties, whether permission

for construction on the said properties has been granted by the Controller. Similarly, the 14th respondent shall also file a report as to the status of the properties as mentioned in items (v) and (vi) and if such properties are Wakf properties whether permission for construction on the said properties have been granted. Let such reports be filed by the respective authorities on or before the next date.

Liberty is granted to the learned Advocate for the petitioner to make minor corrections in the address of the property mentioned in paragraph 7 of the writ petition.

List the matter on 15th March, 2024.

Affidavit of service filed in Court today be kept on the record.

(T.S. SIVAGNANAM)
CHIEF JUSTICE

(HIRANMAY BHATTACHARYYA, J.)