

(2012) 06 CAL CK 0007

Calcutta High Court

Case No: Writ Petition No. 418 of 2012

Sri Malay Munshi

APPELLANT

Vs

The Kolkata Municipal
Corporation and Others

RESPONDENT

Date of Decision: June 26, 2012

Citation: (2013) 2 CHN 255 : (2013) 1 WBLR 674

Hon'ble Judges: Soumitra Pal, J

Bench: Single Bench

Advocate: Sakya Sen, P. Saha, A. Mondal and L.R. Mandal, for the Appellant; Jugal Porel and D. Mondal, for the Respondent

Judgement

Soumitra Pal, J.

Affidavit of service filed in Court today be kept on record. Despite service of notice, none appears on behalf of the private respondent nos. 5 and 6. Leave granted to the petitioner to correct the typographical mistake in prayer (a) at page 25 of the writ petition.

2. In the writ petition, the petitioner stated to be a tenant on the premises at 58B, Ramkanta Bose Street, Kolkata 700003, has prayed for a direction upon the authorities of the Kolkata Municipal Corporation to cancel the sanctioned plan granted in favour of the respondent no. 6 since it has been alleged that there has been material misrepresentation before the Corporation while seeking sanction of the building plan of the said premises as the agreement dated 22nd July, 2010, entered into between him and the owner of the premises and the developer, who are parties to the writ petition, wherein it was agreed that on completion of the construction of the building the tenancy agreement would come to an end and the petitioner will be the owner of a 140 square feet residential room, one bath privy and one kitchen space, has been suppressed by the private respondents. Submission has been made that as it is evident from the site plan, appearing at page 37 of the writ petition, that no space measuring 140 square feet has been left for the

petitioner to occupy after the construction is raised, as agreed in the said agreement dated 22nd July, 2010, appropriate direction, as prayed for in the writ petition, may be issued.

3. Learned Advocate appearing on behalf of the Corporation disputing the allegations made in the writ petition submits that sanction of the building plan was granted after Dipankar Bakuli, the respondent no. 5, the developer, by a registered declaration dated 30th October, 2010 before the municipal authorities had, inter alia, declared "That I will not evict any tenant and in case it is necessary to remove any tenant, I undertake to provide him with incidental area in and around the premises by mutual agreement". According to him, since the authorities of the Corporation had acted on the basis of such declaration, sanction granted is just and proper.

4. Having heard learned Advocates for the parties and considering the facts and circumstances of the case, since I find that the private respondent No. 5 had given a registered declaration dated 30th October, 2010, which in my view is a duly stamped and legally enforceable declaration under Note 1 of Rule 4(2) of the Kolkata Municipal Corporation Building Rules, 2009, that he will not evict any tenant which includes the petitioner, from the premises concerned and as in the said declaration the said private respondent had also declared that "If there be any dispute between myself and any tenant the matter will be referred to the Municipal Commissioner or any office of the Kolkata Municipal Corporation authorised by the Municipal Commissioner in this behalf whose decision shall be final and binding on the parties", no order is passed on the writ petition save and except that the Corporation shall ensure that the registered undertaking given, on the basis of which sanction of the building plan has been granted, is adhered to by the private respondent Nos. 5 and 6, failing which the Corporation shall take coercive measures in accordance with the provisions of the Kolkata Municipal Corporation Act, 1980. The writ petition is disposed of.

5. Since the writ petition is disposed of at the stage of admission without calling upon the respondent nos. 1, 2, 3 and 4 to file affidavits controverting the allegations made, allegations made therein are deemed not to have been admitted by them.

6. Let a photocopy of the registered declaration by the private respondent no. 5 be kept on record. No order as to costs.