

(2007) 12 CAL CK 0007
In the Calcutta High Court
Case No : Writ Petition No. 20860 (W) of 2007

Smt. Mili Mukherjee and Another	Vs	APPELLANT
Kolkata Municipal Corporation		RESPONDENT

Date of Decision : 11-12-2007

Acts Referred:

Calcutta Municipal Corporation Act, 1980 — Section 535, 536, 537
Constitution of India, 1950 — Article 300A

Citation : (2007) 12 CAL CK 0007

Hon'ble Judges : Dipankar Datta, J

Bench : Single Bench

Advocate : Rudraman Bhattacharya, Mr. S.S. Basu and Mr. Ananda Basu, for the Appellant; Biswajit Mukherjee, for the Respondent

Final Decision : Allowed

Judgement

Dipankar Datta, J.—The subject-matter of challenge in this petition is a notice dated 31st August, 2007 issued by the Assistant Engineer and Executive Engineer of the Kolkata Municipal Corporation (hereafter the Corporation). By that order the petitioners have been informed of initiation of a proposal for acquisition of Premises No.24/2 Pottary Road, Ward 56, Borough VII before the Land Acquisition Collector, Kolkata for the purpose of setting up of a school and accordingly, a request has been made to the petitioners to stop construction until further orders.

2. Certain back ground facts need to be noted. By an order dated 25th January, 2006 issued by the Chief Manager (Education and SS) of the Corporation, the petitioners were informed the order of the Joint Municipal Commissioner dated 20th January, 2006 in connection with relinquishment of tenancy right in respect of erstwhile KMCP School at the premises in question and a request was made to the petitioners to be physically present in the office chamber of the Joint Municipal Commissioner on 7th February, 2006 to execute documents of transfer of tenancy rights.

3. In terms of the aforesaid notice, tenancy rights were relinquished in favour of the petitioners and vacant possession of the premises in question was delivered to the petitioners on 29.4.06. After receiving possession, the petitioners applied for sanction of a plan. Their prayer was granted and a building permit was issued on 13.4.07. By a letter dated 9.7.07, the petitioners informed the Corporation about commencement of construction at the premises in question in terms of the applicable building rules. While construction was being raised, a letter dated 9.8.07 was issued by the Executive Engineer of the Corporation wherein it was alleged that the petitioners while applying for the sanction plan had suppressed material facts and, therefore, were called upon to reply within seven days why the sanction shall not be revoked. The notice was duly replied to by the petitioners. On receipt of such reply, the selfsame Executive Engineer by a notice dated 28.8.07 replied that the notice dated 9.8.07 had been issued on the basis of a misunderstanding and accordingly, withdrew the allegation contained therein. Three days thereafter, the impugned notice appears to have been issued.

4. Mr. Mukherjee, learned counsel for the Corporation submits that in terms of section 535 of the Kolkata Municipal Corporation Act (hereafter the Act), the Corporation is empowered to acquire property and in exercise of power conferred by section 537 thereof, a proposal had been initiated for the purpose of acquiring the premises in question to set up a primary school there. Accordingly the petitioners were requested to stop construction at site with the view to minimize the costs for acquisition of the premises in question.

5. Upon reading section 537 of the Act, it appears to this Court that power thereunder can be exercised only if the Municipal Commissioner is unable to acquire the property in terms of section 536 thereof. Admittedly, no effort was made by the Corporation to acquire the property in terms of section 536 of the Act and in absence of such effort, exercise of power u/s 537 to whatever extent it has been initiated, it held to be bad. This Court also finds no provision which empowers the Corporation to deny a citizen of his right to build in accordance with the sanctioned plan merely on the ground that acquisition of a property is in contemplation. Learned counsel for the Corporation urged this Court to read in the provisions of the Statute an incidental power empowering the Corporation to direct the petitioners to stop construction. Provisions of law empowering compulsory acquisition of property belonging to a citizen must be strictly construed and they cannot be construed in a manner to extend their ambit beyond the words actually used by the legislature and while effecting acquisition under such a law, the right to property which is a recognized Constitutional right can be interfered with only with the authority of law. On such construction, this Court is unable to read such power in the statute so as to deprive a citizen of his right to property guaranteed by Article 300A of the Constitution. The Corporation being the creature of the statute is not empowered to indulge in any act so as to deprive any one of his right to enjoy his own property unless there are provisions therein which authorize such act. So long steps in accordance with law are not taken to acquire a property, a citizen, cannot be restrained from enjoying his

property on the ground of attempt to minimize costs of acquisition.

6. This Court is of the considered view that since till date no steps in accordance with the provisions of the Act have been taken for acquiring the property of the petitioners, the direction contained in the notice dated 31st August, 2007 is absolutely unauthorized. Accordingly, the same stands set aside. The petitioners shall be entitled to raise construction in accordance with the sanctioned plan.

7. However, this order shall not prevent the Corporation from proceeding in accordance with law to acquire the property of the petitioners. If required for the purpose of the Act.

8. Since the writ petitioner has been decided on the point of law, as discussed above, allegations of malice made by the petitioners against the officials of the Corporation shall not be deemed to have been submitted by them.

Urgent Xerox certified copy of this order, if applied for, be furnished to the parties within three days from the date of putting in the requisite therefore.

Application allowed

Decided on 15.10.2007

Mr. Ananda Basu for the Petitioners

Learned counsel for the Corporation prays for time to obtain instructions from his client.

List this writ petition as a "Motion" on 21st November, 2007.

Until further orders the impugned order dated 31st August, 2007 issued by the Corporation shall remain stayed.

This interim order is passed because learned counsel for the Corporation could not invite the attention of this Court to any provision of the Statute whereunder such order could have been passed.