
(2018) 05 CAL CK 0152
In the Calcutta High Court
Case No : Writ Petition4047 (W) of 2018

Swarup Kumar Jana & Ors.

APPELLANT

Vs

State Of West Bengal & Ors.

RESPONDENT

Date of Decision : 08-05-2018

Acts Referred:

Citation : (2018) 05 CAL CK 0152

Hon'ble Judges : DEBANGSU BASAK, J

Bench : Single Bench

Advocate : Saptansu Basu, Soumen Kr. Dutta, G.N. Imrohi, Mir Anuruzzaman, Dipannita Banerjee, Lal Ratan Mondal, Abhishek Chowdhury

Final Decision : Disposed Of

Judgement

The petitioners assail a reasoned order of Rajarpur- Sonarpur Municipality. Learned senior advocate for the petitioners submits that, the petitioners had approached the writ court earlier by way of W.P. No.6791(W) of 2017 complaining of inaction on the part of the municipality in not considering the application raising objection against sanction of a further plan on May 21, 2015.

Learned senior advocate for the petitioners submits that, the petitioner had purchased an immovable property prior to the further sanction being granted on May 21, 2015. The purchase was prior to 2015. It was incumbent on the municipality, to inform the owner of the property, prior to granting any further sanction. It was incumbent on the municipality to consider the objection in such light. The municipality has failed to do so.

Learned advocate appearing for the municipality submits that, the petitioners are, at best purchasers of an immovable property, in violation of the

stipulations made in the sanctioned plan to the effect that, transfers are prohibited without the completion certificate being issued. Since the petitioners themselves are at fault, the petitioners cannot ventilate their grievances. The municipality is, therefore, correct in deciding on the issue as recorded in the impugned order. The municipality will take steps in terms of the impugned order.

Learned advocate for the private respondents submits that, his client had approached the municipality for grant of revision in the application prior to the sale. I have considered the rival contentions of the parties and materials made available on record. The issue, in the facts of the present case, falling for consideration before the municipality in terms of the order of the High dated July 31, 2017 is that, whether the revision in the plan was granted upon notice to all the owners of the property or not. All the owners of the property are entitled to notice when a revision of the sanction is sought to be undertaken by the municipality.

In the present case, the petitioners claim to be the owner when the revision was granted. The claim of ownership is sought to be disputed on behalf of the municipality on the ground of violation of one of the stipulations in the initial sanctioned plan. Title to an immovable property passes inter vivos upon compliance of the provisions of the Transfer of Property Act, 1882 read with the provisions of the Registration Act, when an immovable property is compulsorily registrable under the Registration Act. It is not for the municipality to decide on the title.

Learned advocate for the municipality submits that, the municipality has not decided the title. I, however, find from the impugned order that, the municipality did not take into consideration the objections raised by the petitioners at all. It has proceeded to decide that, the petitioners are not entitled to raise an objection and that, such an objection is not required to be considered in view of the so called violation of the stipulations in the initial sanction granted. That is not the direction of the High Court in its order dated July 31, 2017. In any event, the municipality, irrespective of the direction of the High Court is required to consider the objection raised on its merits. It cannot sidestep the issue raised in the objection on the ground that, the transfer is bad and, therefore, the petitioners have no locus.

The impugned order at page 126 of the writ petition is set aside. The

municipality is directed to act in terms of the order dated July 31, 2017 passed in W.P. No.6791(W) of 2017, in accordance with law. The time period to comply with such order is extended for a period of four weeks from the date of communication of this order to the municipality. W.P. No.4047 (W) of 2018 is disposed of.No order as to costs. Urgent certified Website copy of this order, if applied, be supplied to the parties, upon compliance of all requisite formalities.