

ITEM NO.2

COURT NO.14

SECTION XVI

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G SPetition for Special Leave to Appeal (C) No.1893/2020

[Arising out of impugned final judgment and order dated 05-09-2019 in FMA No. 859/2019 passed by the High Court at Calcutta]

THE KOLKATA METROPOLITAN DEVELOPMENT AUTHORITY Petitioner(s)

VERSUS

SUBHAM ESTATE PRIVATE LIMITED & ORS. Respondent(s)

(IA No. 166416/2021 - APPROPRIATE ORDERS/DIRECTIONS, IA No.11278/2020 - PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES, IA No. 246411/2023 - PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES & IA No. 59011/2023 - PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES)

Date : 22-01-2025 This matter was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE J.B. PARDIWALA

HON'BLE MR. JUSTICE R. MAHADEVAN

For Petitioner(s) : Ms. Nandini Sen Mukherjee, AOR

For Respondent(s) : Ms. Anisha Upadhyay, AOR

Mr. Partha Chakraborty, Adv.

Mr. Soumya Dutta, Adv.

Mr. Deep Chakraborty, Adv.

Mr. Manoranjan Paikaray, Adv.

Mr. Aniruddha Purushotham, Adv.

Mr. Tejaswi Kumar Pradhan, AOR

Mr. Sujoy Mondal, Adv.

Mr. Satish Vig, AOR

UPON hearing the counsel the Court made the following
O R D E R

1. This petition arises from the Judgment and Order passed by the High Court of Calcutta on its original side dated 5-9-2019 in FMA No.859/2019, by which the said FMA filed by the Respondent No.1 - herein came to be disposed of with a direction to the petitioner -

Kolkata Metropolitan Development Authority - herein to sanction the plan in favour of the private respondent.

2. The controversy between the parties is in a narrow compass.

3. The Respondent No.1 - herein wants to put up construction in plot No.2469, i.e., the subject - property in accordance with the Rules and Regulations.

4. The petitioner - Authority says that the Respondent No.1 cannot put up any construction on the subject - property as the same has been acquired.

5. This appears to be a second round of litigation.

6. We take notice of the order passed by the Division Bench of the High Court way back on 30-11-2010. The order reads thus:-

"After hearing the learned Counsel for the parties including Mr. Bhattacharjee, who is appearing on behalf of KMDA submitted that they do not have any objection if the writ petitioner carries on construction work in the non-acquired area as mentioned in the Memo dated 10th July, 2008 issued by the Deputy Secretary (LA) Cell/Head Quarters/KMDA being annexure P-3 to the writ petition.

The disputes otherwise as has been tried to be placed before us on behalf of the respondent is nothing but a question of fact and in our considered opinion, we cannot go into that details in this writ petition. Therefore, we only allow such prayer which has been made on behalf of the respondent before us that they shall be able to carry on their construction work only in the non-acquired area and where the construction carried out on the acquired portion, they should not further construct or in any way stand in the way in respect of the said acquired property.

On the above terms as suggested by the parties the appeal is disposed of.

xx xx xx xx"

7. A plain reading of the order, referred to above, indicates that all that was submitted by the Authority - herein was that it

would have no objection if the Respondent No.1 - herein carries on construction work in a non-acquired area.

8. As on date, there is no clarity which part of the land is acquired and which part is not acquired. This is a disputed question of fact and we wonder how the High Court could have gone into such a disputed question of fact.

9. We now straightaway go to the impugned order passed by the High Court. The High Court, while disposing of the petition filed by the Respondent No.1 - herein has observed as under:-

"In the above circumstances, we direct the Kolkata Municipal Corporation to consider sanction of the said plan strictly according to the order dated 30th November, 2010, which in our opinion has become final and binding between the parties in the absence of any challenge thereto in a superior forum. This consideration for sanction has to be concluded by a reasoned decision within 3 months of communication of this order.

Since the matter is old the original plan for fresh sanction along with the proposed plan is not available with the records of the respondent corporation. The appellants will furnish them with a copy which will be treated as the original for the purpose of compliance with this order. The appellants will also comply with other routine formalities."

10. Thus, the High Court seems to have directed the Kolkata Municipal Corporation to consider sanctioning of the plan strictly according to the Order dated 30-11-2010 which we have referred to above and which according to the High Court has attained finality between the parties in the absence of any challenge thereto before a superior forum.

11. It appears that the High Court had disposed of the matter in 2010 based on the Memorandum dated 10-7-2008 which was issued by the Deputy Secretary (LA), L.A.-Cell/HO/KMSA.

12. We have heard Ms. Nandini Sen Mukherjee, the learned counsel appearing for the petitioner and Mr. Partha Chakraborty, the learned counsel appearing for the Respondent No.1.

13. Our understanding of the direction issued by the High Court is that no writ of mandamus as such has been issued to the petitioner - Authority to sanction the plan and grant permission to the Respondent No.1 to put up the construction as he desires on the subject-property.

14. It appears that the High Court has misconstrued the order dated 30-11-2010. In the order of 30-11-2010 all that was recorded is the statement that the authority would have no objection if the construction is to be put up on a non-acquired area.

15. At this stage, we also heard the learned counsel appearing for the Kolkata Municipal Corporation. According to him, the plan which was earlier approved has lapsed. There is no fresh sanctioned plan as on date.

16. We dispose of the Special Leave Petition with a direction to the Kolkata Municipal Corporation to hear the petitioner - Authority as well as the Respondent No.1 afresh on the issue of acquired portion and non-acquired portion of the subject property within a period of eight weeks from today.

17. If the Authority is able to make out a case that the construction is intended to be put on an acquired portion, then the Corporation may take an appropriate decision in that regard

18. However, it is incorrect to say that there is a direction to the Kolkata Municipal Corporation to sanction the plan and permit the Respondent No.1 to put up the construction.

19. The parties shall be heard afresh on all issues by the Corporation and then an appropriate decision be taken.

20. At this stage, shockingly it was pointed out by the learned counsel appearing for the Corporation that the Respondent No.1 has already put up the construction.

21. Ultimately, if it is found that the Respondent No.1 has put up construction on any acquired part of the subject property, then the Corporation shall proceed to take action immediately in accordance with law.

22. Pending applications, if any, shall also stand disposed of.

(VISHAL ANAND)
ASTT. REGISTRAR-cum-PS

(POOJA SHARMA)
COURT MASTER (NSH)