

18.12.2020
Sl. No.5
srm

C.O. No. 1452 of 2020

Sri Chandra Bhusan Chaudhury
Vs.
Sri Ram Prasad Gupta & Ors.

Mr. Sanjay Mukherjee,
Ms. Koel Sarkar

...for the Petitioner.

Mr. Bipin Ghosh

...for the Opposite Parties.

This revisional application has been filed by the developer who is the defendant No.3 in Title Suit No.1092 of 2018, being aggrieved by the order dated December 19, 2019 passed by the learned District Judge, Howrah in Misc. Appeal No.197 of 2019. The suit is for declaration, perpetual and temporary injunction. The suit has been filed by the tenants of the defendant Nos.1 and 2. The tenants prayed for declaration that they are the premises tenants under the defendant Nos.1 and 2 in respect of the tenanted rooms as described in the schedule of the plaint. It was alleged that the defendants did not have any right to evict the said tenants/plaintiffs and declaration was also sought for to the effect that the defendants did not have any right to construct and/or damage the suit property and oust the tenants therefrom.

The tenants/plaintiffs prayed for an ad interim injunction. The said application for injunction was disposed of

by the learned Civil Judge (Junior Division), 5th Court, Howrah on November 14, 2019. The learned trial Court allowed the application for temporary injunction and restrained the defendants including the petitioner herein from disturbing the possession of the plaintiffs or evicting the plaintiffs from the suit property. The learned Court although noted that an agreement for rehabilitation had been entered into between the defendants and the plaintiffs, yet the learned trial Judge passed the order of injunction without considering the meaning and purport thereof. However, aggrieved by the order dated November 14, 2019, the petitioner preferred Misc. Appeal No.197 of 2019. The learned lower appellate Court disposed of the Misc. Appeal *ex parte* thereby modifying the order of the learned trial Judge restraining the defendants from disturbing the possession and evicting the plaintiffs other than by due process of law in respect of the tenanted premises.

It is submitted on behalf of the petitioner that the order of the learned lower appellate Court suffers from illegality and material irregularity, inasmuch as, while granting the order of injunction thereby modifying the order of the learned trial Judge, the learned lower appellate Court failed to record any reasons on the *prima facie* case, balance of convenience and inconvenience and irreparable loss and injury that may be

suffered by the respective parties. It is submitted on behalf of the developer that the tenants have already been put into possession in respect of the premises in question.

It is submitted on behalf of the opposite parties that until and unless the tenants are put into possession by the landlords upon receiving the landlords' share from the developer, the developer cannot be allowed to create any third party interest by developing the entire property.

I have perused the order impugned dated December 19, 2019 passed by the learned District Judge, Howrah. From the order, it is evident that the learned Judge failed to record her satisfaction as to why in the opinion of the learned Judge, an injunction of such a nature should have been passed. The learned Judge did not consider the rehabilitation agreement and also the contention of the petitioner that the said agreement had been complied with by the developer.

Records reveal that there is a rehabilitation agreement in place, that the tenants are residing elsewhere in terms of the development agreement so that the property may be developed. It is also a fact that the development agreement provides that the share of the landlords to be allotted by the developer included the tenanted portion and the tenants would be rehabilitated.

Under such circumstances, the order dated December 19, 2019 cannot be sustained being devoid of reasons and the same suffers from non-application of mind as also non-appreciation of the materials available before the learned lower appellate Court which ought to have been considered before a blanket order of temporary injunction could be passed. Even the contention of the tenants with regard to the rehabilitation was not addressed by the learned lower appellate Court and a vague and unreasoned the injunction order was passed. Unless the property is developed and completed, the rights of the plaintiffs/tenants also cannot be protected. The order impugned is set aside and quashed.

Thus, balance of convenience and inconvenience and irreparable loss and injury that such order may cause to the developer and the landowners ought to have been considered on the basis of the clauses in the development agreement, the rehabilitation agreement and the fact situation of the case especially that the tenants are living elsewhere and the property was being developed. The developer will be allowed to construct and complete the building as per the development agreement. Without handing over the owners' allocation/share to the owners, that is, the defendant Nos.1 and 2 (which includes the proposed tenanted portion), the developer will

not create any third party interest and will not induct any new tenant.

This revisional application is, thus, disposed of.

There will be, however, no order as to costs.

Urgent photostat certified copy of this order, if applied for, be given to the parties on priority basis.

(Shampa Sarkar, J.)