

10.12.2020
Court No. 19
Item No. 09
CP

C.O. 1485 of 2020

M/s. Ganges Gardens Realtors Pvt. Ltd. & ors.
vs.
Rayees Alam & ors.

(via video conference)

Mr. Abhrajit Mitra
Mr. Satadeep Bhattacharyya
Mr. Mehboob Rahman

....for the petitioners.

Mr. Tanmoy Mukherjee

...for the plaintiff.

Mr. Sk. Md. Galib

.....for the Board of Auqaf.

This revisional application has been preferred by defendants 1 to 7 in Suit No. 13 of 2020 pending before the learned Wakf Tribunal, Kolkata. By the order impugned dated November 18, 2020, the learned tribunal was pleased to grant an order of status quo with regard to the nature and character of the suit property. The said ad interim order was extended by another order dated December 4, 2020 and the injunction application has been fixed for hearing on December 16, 2020.

Mr. Mitra, learned senior advocate appearing on behalf of the petitioners, submitted that the order impugned deserves to be set aside on the grounds

that the learned tribunal had failed to consider the prima facie case, balance of convenience and inconvenience and irreparable loss and injury while passing the order impugned. Mr. Mitra refers to the portions of the order to indicate that the learned tribunal had gone on to discuss extraneous issues and had given reasons beyond the scope of the dispute before it. According to him, the learned tribunal ought to have restricted its order to the facts and circumstances of the case in hand and recorded its satisfaction on prima facie case, balance of convenience and inconvenience and irreparable loss and injury instead of venturing into discussing the provisions of law and statutes and the different decisions of the Hon'ble Apex Court which have no relevance with the facts of the case involved.

Mr. Mukherjee, appearing on behalf of the plaintiff, submits that the revisional application at this stage may not be entertained in view of the fact that the application for injunction has been fixed on December 16, 2020 and the main matter may be heard out.

Mr. Galib, appearing on behalf of the Wakf Board, submits that the ad interim order of injunction was extended upon a contested hearing and the learned tribunal had fixed the application for temporary injunction for final hearing and, as such, passing any order of stay in this revisional

application would amount to allowing the relief in the final form.

I have considered the order impugned and I am in agreement with Mr. Mitra to the extent that the learned tribunal instead of restricting its reasons to the facts of the instant case has travelled beyond the scope of the dispute before it and gone on to discuss elaborately on cases, decisions and points of law without applying the same to the facts of this case. This order is devoid of any reasons and only the theory of granting an ad interim injunction has been discussed instead of recording the prima facie satisfaction, balance of convenience and inconvenience and irreparable loss and injury in the dispute involved in the case before it. This order does not have any legs to stand on. The orders dated November 18, 2020 and December 4, 2020 are set aside and quashed.

However, taking into consideration the fact that, according to Mr. Mitra, the building is substantially complete which is refuted by Mr. Mukherjee and as the allegations are that the property is a wakf property, in my opinion, justice would be sub-served if both parties maintain status quo with regard to the nature, character and possession of the suit property for a period of seven days within which time the learned tribunal shall conclude the hearing of the injunction application.

The learned tribunal is directed to hear out the application for injunction on December 14, 2020. This court is consciously bringing forward the date in view of the fact and circumstances of the case. The learned tribunal is requested to take up the hearing on December 14, 2020 and conclude the hearing of the same within seven days.

It is also made clear that the learned tribunal shall decide the issues involved and agitated by both the parties on the basis of the submissions and records before it. This court has not gone into the merits of the claims and counterclaims of the parties and the learned tribunal will decide the issues independently.

The defendants are directed to file their written objection by December 12, 2020. Advance copies of the same should be served upon the learned advocates appearing for the respective parties within December 12, 2020.

The revisional application is, thus, disposed of. There shall be no order as to costs. The learned Tribunal is directed to act on the basis of the server copy of this order.

Urgent photostat certified copy of this order, if applied for, be given to the parties as expeditiously as

possible subject to compliance of all usual formalities. All parties are to act on the server copy of this order.

(Shampa Sarkar, J.)