

12.05.2021
Srimanta/
Mithun
Sl. No. 03
Ct. No. 03

WPA/2970/2021

[Via Video Conference]

Rama Paul
-Vs.-
State of West Bengal

Mr. Sudip Ghosh Chowdhury, Adv.

...for the petitioner.

Mr. Manas Kumar Kundu, Adv.,
Mr. Debabrata Mondal, Adv.

...for the Opposite Party.

This is an application under Article 226 of the Constitution of India filed by the petitioner, a senior citizen and owner of the premises No.1/6, South Purbachal Hospital Road within P.S. Garfa, South 24-Parganas.

By an agreement dated 23rd June, 2008, the respondent No.7 was permitted to install a mobile tower on the roof of the building of the petitioner. It is alleged by the petitioner that due to the failure on the part of respondent No.7 from making proper repairing work of the said mobile tower, the condition of the tower becomes dangerous to human habitation, it may fall on the roof at any point of time causing danger to human life and habitation of the said house as well as the neighbouring area. It is also alleged by the petitioner that she made an application before the respondent Nos.2 and 4 praying for an inspection to

consider the health of the said mobile tower but respondent No.2 did not inspect the premises in question till date so is the instant application.

Mr.Kundu, learned Advocate for the State respondent, on the other hand, submits that there was no privity of contract between the petitioner and the Municipal Corporation and respondent No.7 at the time of agreement. The dispute between the parties essentially relates to non-payment of rent. Therefore, the instant application under Article 226 of the Constitution is not maintainable and the plaintiff can have proper remedy by filing a civil suit. Furthermore, the agreement in question has an arbitration clause and over dispute between the parties, the matter should be referred to the Arbitration.

Having heard the learned Counsels for the parties, I am of the view that the instant writ application can be disposed of even without hearing the respondent Nos.2 to 7.

The petitioner has not raised any grievance with regard to the agreement in question. There is no dispute between the parties which can be refereed to the Arbitration. The petitioner wants an expert's report regarding the health and condition of the mobile tower fixed by respondent No.7 in the year 2008. The petitioner being a resident within Kolkata Municipal Corporation and a tax payer can pray for such direction upon the respondent No.2 to protect her residential house and life and property of its inmates.

Considering such view of the matter, the instant writ petition is disposed of directing the respondent Nos.2 and 4 to inspect the mobile tower set up on the roof of the premises in question within 30 days from the date of communication of this order and submit a report to the petitioner.

The instant writ petition is, thus, disposed of.

Parties are at liberty to act on the server copy of this order.

(Bibek Chaudhuri, J.)