

09.08.2021

Sl. 2
Ct.No. 03
Amalranjan

(Via Video Conference)

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

(COMMERCIAL DIVISION)

FMAT 459 of 2021

**Mahadev Ghosh & Ors.
Vs.
Durgapur Municipal Corporation & Anr.**

**With
CAN No. 1 of 2021**

Mr. Suddha satva Banerjee
Ms. Rituparna Chatterjee
Mr. Amit Muhuri... for the appellants/Petitioners

Mr. Sandipan Banerjee
...for the Durgapur Municipality

Mr. Sabyasachi Chaudhury
Mr. Shounak Mukhopadhyay
Mr. Sayantan Bose
Ms. Madhurima Das ...for the respondents

Mr. Kartik Kumar Ray
Mr. Arindam Paul
Mr. Shaswat Nayak ...for the intervenor

We admit the appeal.

As the point involved is very short,
dispensing with all formalities we have heard out
the appeal and dispose of it by this order.

We are constrained to make a few
observations.

The appellants claim to be the tenants
under the respondent Corporation of a market

complex “Shahid Sukumar Bipani” in Paschim Burdwan. The complex comprises of two floors. We are not going into the intricacies of the landlord tenant dispute between the parties.

By a notice dated 4th May, 2020, the respondent Corporation asked the appellants/ petitioners to vacate the premises forthwith and deliver back its possession to the Corporation so that they could invite “a fresh tender” to lease it out.

This notice was challenged by the appellants in a writ application (WPA 5389 of 2020) in this court.

It was disposed of on 1st October, 2020 by a learned single judge recording the submission of learned counsel for the respondent Corporation that they would withdraw the notice and take appropriate legal action. The court also observed that the writ petitioners’ appropriate remedy was in a civil forum and not in writ jurisdiction.

No such action appears to have been taken by the respondent Corporation.

A self-same notice with exactly the same contents was again issued by the respondent Corporation on 26th July, 2021.

This was challenged by the appellants in the subject suit before the learned court below where an interim application was also made.

We are of the view that there is no point in keeping the interim application pending before the learned court below. This is for the simple reason that the impugned notice dated 26th July, 2021 could not have been issued without the respondent Corporation taking recourse to a procedure established by law to evict the appellants/petitioners, as admitted by them in the earlier writ proceeding in this court. Without following that procedure, there is no question of interfering with the appellants'/petitioners' possession.

Therefore, there is no point in wasting unnecessary time in hearing the interim application.

The interest of justice would be served if the suit is proceeded with, subject to the question of maintainability.

We also observe that since the suit is against a statutory Corporation, Section 80 of the Civil Procedure Code did not apply and the learned trial court is to proceed accordingly.

We dispose of the appeal and the connected application with the following directions:

- a) The interim application in the court below is disposed of by this order. The parties will take appropriate steps before that court to record its disposal by this order.
- b) The appellants'/petitioners' possession shall not be interfered with, save and except under an order obtained by the respondent Corporation adopting a procedure established by law.
- c) The trial of the suit be expedited subject to the question of maintainability.

We make it abundantly clear that pendency of the suit or this order shall not prevent the respondent Corporation to proceed against the appellants/petitioners in accordance with law for the eviction or shall not prevent any lawful authority from passing an order for eviction of the appellants/petitioners following a procedure established by law.

This order shall also not be construed as one restraining the respondent Corporation from taking any other lawful action against the appellants/petitioners.

This order is to be read as one disposing of the interim application before the learned court below by modifying the impugned order.

The appeal and the connected application are disposed of.

(I. P. Mukerji,J.)

(Aniruddha Roy,J.)