

11. 03.12.2021
Ct. No. 21
ab

C.O. 2047 of 2021

Byomkesh Chakraborty & Ors.

-VS-

Sk. Sajahan

(Through Video Conference)

Mr. Sujit Bhunia

... for the petitioners

Mr. Manoj Bhakta

...for the Opposite Party

The petitioners landlords/defendants of the Title Suit No. 742 of 2018 being aggrieved by the order passed by the learned Civil Judge (Junior Division), 1st Court, Paschim Medinipur, allowing the prayer of the plaintiff/opposite party for local inspection of the disputed property on 16.11.2021 has preferred this application.

Contention of the petitioner is that the opposite party being a trespasser has filed the above mentioned suit for declaration of his tenancy right over the disputed property and permanent injunction restraining the rightful owners/petitioners from interfering with his peaceful possession over the same. And where he has prayed for local inspection of the suit property not only once but thrice. The first application was allowed ex-

parte and such order was set aside by the Hon'ble High Court in C.O. no. 738 of 2019 on 13.6.19, with a liberty to pray for local inspection afresh before the court below within one month from the date of communication of the order and to dispose of the same after hearing both the parties and after adhering to the principle of natural justice.

The opposite filed the second application for inspection as directed by the Hon'ble High Court, but much after the expiry of period of one month and which was rejected with the finding only experts can conduct the inspection and not by an advocate commissioner. Again third application was and which was allowed vide impugned order and allowed Advocate commissioner to hold inspection with the help of a Structural Engineer or with the help of a Building Surveyor. Thus learned advocate for the petitioners contented the order impugned is bad, illegal and with material irregularity and pray for setting aside of the same.

Ld. Advocate for the opposite party contended disputed premises is in need of immediate repair otherwise would be very unsafe for the tenant/ opposite party to run his tailoring business therefrom and for which purpose local inspection is required to bring on record the present condition of the tenanted structure. Requests of the tenant to the laodlords petitioners for repair have fell on deaf ears. Rather who have

threatened the tenant with eviction. The learned court below passed the impugned order not only the prayer of the tenant, but also the report of the concerned BLLRO in respect of the present condition of the tenanted structure.

Perused the photographs which the tenant has filed in the court this day and which show indeed the tenanted structure is a single structure with tile roof. The front side made of brick wall with iron shutter and remaining back side structure made of mud and bamboo. The back of the structure specially made of mud in totally damaged and dilapidated condition and not possible to use the same.

It is settled law a tenant has right to stay in the tenanted premises until and unless he is evicted by due process of law. Law also demands that a lawful tenant has right to enjoy the tenanted premises in good and tenantable condition for which purpose the tenancy was created. So long the tenancy subsists the tenant may with prior consent of the landlord can repair the tenanted premises and make it habitable, if the landlords fail to keep the premises in good and tenantable condition.

From the materials in record, it is seen the petitioners landlords have failed to keep the premises in good and tenantable condition and compelled the tenant to move the court for getting the tenanted

structure repair to make it habitable so long his tenancy is not terminated and to get such work done he has prayed for local inspection of the tenanted structure. So, here this court does not find any illegality or material irregularity in the order impugned.

Further, according to Learned Advocate for the opposite party Advocate commissioner who has been appointed vide the impugned order has already conducted local inspection of the suit property on 28.11.2021 and awaiting submission of report. He files copy of notice served on him and to which Learned Advocate for the petitioners raise no objection. In view of such development during the pendency of this revisional application makes the present application not maintainable.

Accordingly, **C.O. no. 2047 of 2021** stands dismissed.

Interim order, if any, stands discharged.

There will be no order as to costs.

In view of the order made above affidavits are not invited. Allegations made shall be deemed to be denied.

Let the photographs and copy of notice filed by the opposite party be retained with the file.

All parties shall act in terms of the copy of the order downloaded from the official website of this Court.

Urgent Xerox certified photocopies of this judgment, if applied for be given to the parties upon compliance of the requisite formalities.

(**Kesang Doma Bhutia, J.**)