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ORDER SHEET

WPO 265 of 2021
IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
ORIGINAL SIDE

KAMAL HAMID
VS
STATE OF WEST BENGAL & ORS.

BEFORE:
The Hon'ble JUSTICE DEBANGSU BASAK
Date: 5th August, 2021.

(Via Video Conference)

Mr. S.S. Arefin, Adv.
...for the petitioner
Mrs. Sipra Majumder,
Ms. Debarati Sen (Bose), Advs.
...for the State
Mr. Biswajit Mukherjee,
Ms. Poushali Banerjee, Advs.
...for K.M.C.
Mr. Tarique Quasimuddin,
Mr. Ram Narain Rajak, Advs.
...for respondent no. 3

The Court: The petitioner claims that the police are not allowing the petitioner to continue with the repair.

State, Kolkata Municipal Corporation and the private respondent are represented.

Learned advocate appearing for the State submits that, the police did not prevent the petitioner from making the repair.

Learned advocate appearing for the corporation draws the attention of the Court to the pleadings in the writ petition. He submits even according to the petitioner, no permission for repair is required from the KMC.

Learned advocate appearing for the private respondent submits that, the petitioner is not a tenant of the private respondent. The private respondent is repairing the building. The Court does not have determination to entertain the present writ petition as it relates to the corporation matter. He relies upon the West Bengal Premises Tenancy Act, 1997 and submits that the petitioner ought to approach the Tribunal for the purpose of repair.

So far as the jurisdiction is concerned, I find from the records that by the order dated July 26, 2021 a co-ordinate Bench before which the writ petition was moved, and such Bench having determination over corporation matter released the matter due to lack of determination. Such order was passed in presence of the private respondent. The writ petition is now being treated as under Group IX. The private respondent therefore cannot be allowed to rake up the same issue of lack of determination again.

The petitioner seeks to repair a portion of the premises under the occupation of the petitioner. There is a dispute as to whether the petitioner is the tenant of the private respondent or not. A Writ Court need not enter into such dispute. It is open to the private parties to have their disputes with regard to the tenancy settled before the appropriate forum in accordance with law.

Since the police claim, they did not object to the petitioner from repairing the area under his occupation and since corporation is of the view, no permission is required for the repair, it would be appropriate to direct the police to ensure that no breach of peace occurs at the locale when the petitioner is carrying the work of repair, in accordance with law.

This order is subject to any order that may be passed by the appropriate forum in any litigation between the private parties in expert of tenancy or the right to repair.

Since the Court did not invite the parties to file affidavits, allegations made in the petition are deemed to be denied.

WPO 265 of 2021 is disposed of accordingly.

(DEBANGSU BASAK, J.)

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