

6, 7, 8, 9,
10 & 11.
06-04-2022
debajyoti
(Ct. no.06)

FMA 739 of 2021
+
IA NO:CAN/2/2021
+
CAN/5/2022

Sk. Kutubuddin
Vs.
Sri Atanu Kamila & Anr.

W I T H

FMA 674 of 2019
+
IA NO:CAN/1/2017 (Old No:CAN/11778/2017)
(not in the file)
+
CAN/2/2022

Suprakash Roy
Vs.
Ashok Kamila & Ors.

W I T H

FMA 676 of 2019

Suprakash Roy
Vs.
Dhirendra Nath Manna & Ors.

W I T H

FMA 756 of 2019
+
IA NO:CAN/1/2021
+
CAN/2/2022

Sk. Kutubuddin
Vs.
Dilip Patra & Ors.

W I T H

FMA 757 of 2019

**Suprakash Roy
Vs.
Dilip Patra & Ors.**

W I T H

**FMA 758 of 2019
+
IA NO:CAN/1/2021
+
CAN/2/2022**

**Sk. Kutubuddin
Vs.
Dhirendra Nath Manna & Ors.**

Mr. Swatarup Banerjee,
Ms. Somali Mukhopadhyay

... For the Appellant in
FMA 739/21, FMA 756/
19 & FMA 758/19.

Mr. Haradhan Banerjee,
Mr. Amitava Pain,
Mr. Subhrangshu Datta,
Mr. Partha Pratim Mukhopadhyay

... For the Appellant in
FMA 674/19, FMA 676/
19 & FMA 757/19.

Mr. Arunava Ghosh,
Mr. Tapash K. Bhattacharya,
Mr. Aviroop Bhattacharya

... For Respondent No.1.

Mr. Asit Kr. Bhattacharyya

... For Respondent Nos.2 to 5.

**Re : CAN 5 of 2022 in FMA 739 of 2021, CAN 2 of
2022 in FMA 756 of 2019 & CAN 2 of 2022 in
FMA 758 of 2019.**

Read order dated March 03, 2022.

The appellant, Sk. Kutubuddin, has filed an application for modification of the said order. He says that in the said order, the writ petitioners/respondents

have been referred to as tenants. He does not recognize the writ petitioners as tenants. He has filed a suit in the Purba Medinipur court being O.S. No.302 of 2017 against all the three writ petitioners describing them as trespassers. His prayer in the suit is for a declaration that such trespassers surrendered possession in his favour and vacated the premises in question. He says that the reference to the writ petitioners as tenants in our order dated March 03, 2022 will prejudice his case in his aforesaid suit.

We clarify that description of the writ petitioners as tenants in our order dated March 03, 2022 shall not in any manner prejudice the appellant, Sk. Kutubuddin's case in his suit being O.S. No.302 of 2017 pending in the Purba Medinipur court. His case will be decided on merits by that court without being influenced by any observation in our order dated March 03, 2022, of which modification is sought for in this application. The appellant, Sk. Kutubuddin, will be entitled to treat the writ petitioners as trespassers in the suit and place relevant evidence before that court in support of his case. The Learned Civil Court will decide the issue on merits.

CAN 5 of 2022 in FMA 739 of 2021, CAN 2 of 2022 in FMA 756 of 2019 and CAN 2 of 2022 in FMA 758 of 2019 are, accordingly, disposed of.

Re : FMA 739 of 2021, FMA 674 of 2019, FMA 676 of 2019, FMA 756 of 2019, FMA 757 of 2019 & FMA 758 of 2019.

By consent of the parties, the appeals and the applications are taken up together for hearing.

Six appeals are before us. The appeals are all from an interim order dated August 17, 2017 of a learned Single Judge in a set of three writ petitions filed by three persons claiming to be the tenants of the premises in question. They contended before the learned Single Judge that the owner of the premises being Sk. Kutubuddin, who is the appellant in three of the present appeals, set up one Suprakash Roy, who is a resident of the concerned locality and caused him to file a writ petition and obtain an order of demolition of the property in question, behind the back of the present writ petitioners. The learned Single Judge by the interim order impugned before us has restrained the owner of the building from transferring, alienating, encumbering and/or conveying the said property to a third party as also from changing the nature and character of the property in question till the disposal of the writ petition. Being aggrieved, Sk. Kutubuddin has filed three appeals in respect of the three writ petitions and so has Suprakash Roy.

It is submitted before us that the building in question has been demolished. Sk. Kutubuddin says that the three writ petitioners were rank trespassers and they have since, before demolition of the building, surrendered possession in his favour. A suit, as aforesaid, is pending in the Purba Medinipur court where Sk. Kutubuddin has claimed a declaration to that effect.

The three writ petitioners, represented by Mr. Arunava Ghosh, learned counsel, assisted by Mr. Tapash K. Bhattacharya, learned advocate, says that they were tenants of the premises in question. In terms of an order obtained behind their back, the building was demolished. In the event, the owner

constructs a new building, they are entitled to be accommodated therein in equal area as they were holding before demolition of the building.

Indeed, the Rent Act and the Municipal Laws provide for rehabilitation of tenants in a new building which the owner may construct after demolition of the old building where the tenants were in occupation. We are, however, not saying that the writ petitioners are tenants under Sk. Kutubuddin. That is an issue which will be decided in the civil suit filed by Sk. Kutubuddin as also the three civil suits filed by the three writ petitioners, being T.S. No.284 of 2015, T.S. No.285 of 2015 and O.S. No.292 of 2015, which are also pending in the Purba Medinipur court. In the said three suits, the writ petitioners have claimed declaration of tenancy and injunction to restrain Sk. Kutubuddin from evicting them without following due process of law. Naturally, whether the writ petitioners were and are tenants in respect of the premises in question, shall be decided in those civil suits and we say nothing in that regard.

However, we are of the view that if Sk. Kutubuddin reconstructs a building on the land in question, he should accommodate the three writ petitioners in equal area in the said building as they were in possession of various portions of that old building which stands demolished, and we order so. We clarify that in the event Sk. Kutubuddin succeeds in the four civil suits pending in the Purba Medinipur court and obtains a decree in his favour, this order will not stand in his way from executing such decree in accordance with law. However, pending disposal of the aforesaid four suits, the writ petitioners will be entitled to occupy equal area in the new building as they were

occupying in the old building. This will not create any special equity in their favour. Such occupation/possession will be subject to the result of the aforesaid four civil suits pending in the Purba Medinipur court. Needless to say, the writ petitioners shall be liable to pay applicable occupational charges to the landlord/owner as may be determined in accordance with law, obviously after being put into possession.

No further order is called for in the appeals. The parties say that it will serve no useful purpose to keep the three writ petitions pending. Accordingly, the present appeals, the connected applications and the three writ petitions being W.P.12243(W) of 2017, W.P.12244(W) of 2017 and W.P.12245(W) of 2017, stand disposed of.

All parties shall act on the server copies of this order duly downloaded from the official *website* of this Court.

Urgent photostat certified copies of this order, if applied for, be supplied to the parties on compliance of necessary formalities.

(Kausik Chanda, J.)

(Arijit Banerjee, J.)