

D/L
Item No.
10 wt 11
09.02.2022
KOLE

**MAT 53 of 2022
With
IA No. CAN 1 of 2022**

**Gautam Roy
-Vs.-
The Kolkata Municipal Corporation & Ors.**

**With
MAT 22 of 2022
With
CAN 1 of 2022
With
CAN 2 of 2022**

**S Ramesh
-Vs.-
Goutam Roy & Ors.**

*Mr. Mr. R. N. Chakraborty,
Mr. Amrita De,*

...for the appellant.

*Mr. A. Kr Ghosh,
Mr. Gopal Ch. Das,
Mr. R. De,*

...for the KMC.

*Mr. Himadri Sikhar Chakraborty,
Mr. A. Maity,*

...for the State.

*Mr. S. Bose,
Mrs. P. Basu Mallick,*

...for the respondent no. 7.

*Mr. A. Kr. Banerjee,
Mr. A. Das,*

*...for the appellant
in MAT 22 of 2022.*

In Re:- MAT 53 of 2022 with CAN 1 of 2022

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

The appellant/writ petitioner appears to be a stranger purchaser, who purchased the ground floor of a two-storeyed

building from one of the co-sharers of the said property. The respondent no. 7, who is one of the brothers of the vendor of the appellant, claims to be one of the co-sharers of the said building.

It, further, appears that the appellant was put in possession on the ground floor while the respondent no. 7 is in possession of the first floor.

The respondent no.7 obtained a sanctioned plan for making some construction/repair on the roof of the property in question. The appellant by filing the writ petition before the learned Single Judge sought to resist such construction. Learned Single Judge dismissed the writ petition.

In a pending suit between the appellant and the respondent no. 7, an injunction order has been passed restraining the appellant from interfering with the construction work/repair work to be carried out by respondent no. 7.

Learned Single Judge duly considered the arguments advanced by the respective parties and observed that the building was in a dilapidated condition and required immediate repair. It was, further, observed by the learned Single Judge that the appellant could not show any document as to his right in respect of the roof or any document which is inconsistent with the deed of the respondent no. 7. Learned Single Judge found from the respective deeds of the parties that the appellant was not given any right with regard to the roof of the said building, whereas the respondent no. 7 has the roof-right.

Learned Single Judge, however, declined to go into the dispute as regards the title to the said property.

We do not see any reason to interfere with the order of the learned Single Judge. The respondent no. 7 is entitled to carry out the construction work/repair work as sanctioned by the Corporation. Though it has been submitted by the appellant that the sanctioned plan was obtained by way of collusion between respondent no.7 and the Corporation, no such pleading is found in the writ petition. The civil rights of the parties, as rightly observed by the learned Single Judge, cannot be decided in this writ petition.

The appeal, being no. MAT 53 of 2022 and the connected application, being no. CAN 1 of 2022 are accordingly dismissed.

However, we make it clear that it will be open to the appellant to apply for cancellation of the sanctioned plan if the law permits him to do so.

The observations made in this order shall not have any bearing on any pending civil case or any proceeding that the parties may initiate before any other forum.

In Re: CAN 2 of 2022 in MAT 22 of 2022

An application has been filed by the appellant for leave to prefer an appeal against the judgment and order dated December 24, 2021, whereby WPA 20809 of 2021 was dismissed.

The present applicant was not a party to the proceedings before the learned Single Judge. The applicant

says that the re-construction/repair work, that respondent no. 8 in the writ petition was permitted to do, is damaging portions of the premises owned by him. We are of the view that if he has a legitimate grievance, he should approach the appropriate forum and not seek leave of the appeal Court to prefer an appeal from an order to which he was not a party.

We are not inclined to grant leave to the applicant to prefer an appeal against the order dated December 24, 2021. However, the applicant will be at liberty to approach the appropriate forum in accordance with law for the enforcement of any right that he may have in respect of the premises in question and/or for redressal of any other grievance that he may have against the other parties.

The application being, CAN 2 of 2022 is, accordingly, dismissed.

In Re: MAT 22 of 2022 with CAN 1 of 2022

In view of CAN 2 of 2022 being dismissed, the appeal and the stay application also stand dismissed.

Urgent photostat certified copy of this order be supplied to the parties, if applied for, as early as possible, after compliance with all the requisite formalities.

(Kausik Chanda, J.)

(Arijit Banerjee, J.)