

22.12.2022
Item No.09
Court No.6.
S. De

**M.A.T. 1895 of 2022
with
I.A. No. CAN/1/2022**

**Janardan Singh.
Vs
State of West Bengal & Ors.**

Mr. Tapas Kr. Dey,
Mr. Rakesh Roy,
...for the appellant.
Mr. Dipak Kumar Mukherjee,
Mr. Rajib Mukherjee,
Ms. Shreyasi Bhaduri,
...for the Uttarpara Kotrang Municipality.
Mr. T.M. Siddiqui,
Mr. Nilotpal Chatterjee,
Mrs. Amrita Panja Moulick,
...for the State.

A judgment and order dated October 31, 2022, whereby the appellant's writ petition was dismissed, is under challenge in this appeal.

The appellant approached the learned Single Judge claiming to be a tenant in respect of premises no.64/1, T.N. Mukherjee Road, Uttarpara Kotrang Municipality. The appellant contended that the developer of the property forcibly ousted him from the said premises and demolished the same. The petitioner has filed a suit before the learned Civil Judge (Junior Division), 1st Court, Serampore, Hoogly being T.S. No. 540 of 2018. The petitioner has also made a representation before the Municipality in

December 20, 2021. The petitioner contended that such representation has not been considered.

The learned Judge disposed of the writ petition by making the following observations :-

“It appears from the representation filed by the petitioner and the submission made on his behalf that the relief claimed for by the petitioner may be available before the learned Civil Court whether the Suit is pending consideration. The Municipality will not be the appropriate authority to adjudicate any private dispute of forceful ousting of a tenant from the tenanted premises by the landlord.

In view of the above, no relief can be granted to the petitioner in the present writ petition.

It will be open for the petitioner to make appropriate prayer before the proper forum for relief, if so advised.”

Being aggrieved, the writ petitioner is before us by way of this appeal.

Learned advocate for the appellant strenuously argued that the promoter has illegally evicted his client from the premises in question. He submitted with reference to Section 3 Sub-Section 2(d) of the West Bengal Building (Regulation of Promotion of

Construction and Transfer by Promoters) Rules, 1995 that the Municipality sanctioned the building plan without ascertaining the right, title, interest or claim of all concerned persons in respect of the property in question including the interest of the appellant.

We have not called upon the respondents to make argument. Injustice may have been done to the appellant. Nobody can be forcibly evicted. Nobody can be thrown out of a property without following due process of law. This is very well established. However, the forum before which the appellant can seek remedy is not the writ Court. The appellant will be at liberty to ventilate his entire grievance in the pending suit, if necessary by amending the plaint in accordance with law. The appellant may also make a prayer for restoration of possession before the learned Civil Court if he can establish that he has been illegally evicted without following due process of law. If such prayer is made, the learned Civil Court will decide the same on merits without being influenced by any observation in this order or in the order of the learned Single Judge which is under appeal. We clarify that we have not gone into the merits of the dispute.

We find no apparent infirmity in the order assailed before us.

The appeal being MAT 1895 of 2022 is dismissed along with the connected application being I.A. No. CAN 1 of 2022 without any order as to costs.

Since we have not called for affidavits, the allegations contained in the stay application are deemed not to be admitted by the respondents.

Urgent certified photostat copy of this order, if applied for, shall be given to the parties as expeditiously as possible on compliance with all the necessary formalities.

(Apurba Sinha Ray, J.)

(Arijit Banerjee, J.)