

MAT 1746 of 2015

(Biswajit Chakraborty Vs. The State of
West Bengal & Ors.)

**Mr. Pradyot Kumar Das
Mr. Victor Chatterjee**

..... For the appellant

**Mr. Ayan Banerjee
Mr. Tarun Kumar Aich
Ms. Tanusri Sur (Aich)**

..... For the respondent no. 5

**Mr. Alak Kumar Ghosh
Mr. Debangshu Mondal**

..... For the KMC

The present appeal has been preferred against an order dated 29th September, 2015 passed in a writ petition being W.P. No. 15383 (W) of 2015. In the writ petition, the writ petitioner, *inter alia*, prayed for implementation of a notice under Section 411(1) of the Kolkata Municipal Corporation Act, 1980 by which the writ petitioner, as owner and the occupiers of the premises no. 60/12, Gouri Bari Lane, Kolkata – 700 004 were asked to demolish the dangerous portion of the building which is non-repairable and to secure the repairable portion without changing the character and dimension of the said building.

In the order impugned, the learned single Judge also observed as follows:-

“It is made clear that in the event the respondent no. 5 is compelled to vacate the said building, he shall be given 30 days’ time and the petitioner shall make arrangement for his rehabilitation once a new building comes up on the same site. It is also made clear that the respondent no. 5 shall be entitled to the same area in the new building which is in his occupation at present.

The Corporation shall, however, not sanction any building plan for a new building to be raised on the plot in question without the petitioner submitting an undertaking before it to adequately rehabilitate the respondent no.5. As and when the petitioner proceeds to raze the dilapidated building in question, the local police, if approached, shall provide necessary assistance to prevent breach of peace and tranquility.”

Aggrieved by the said order dated 29th September, 2015, the private respondent in the writ petition had preferred the present appeal, *inter alia*, on the grounds that he was not given any opportunity to contest the demolition proceeding and an order was obtained behind his back. The learned single Judge disposed of the writ petition being oblivious of the fact that the sole intention of the respondent no. 5 herein was to oust the appellant from the said premises.

Records reveal that initially by an order dated 17th December, 2015 a learned advocate of this Court, namely, Mr. Sunil Srivastav was appointed as a Special Officer and he was directed to visit the locale and conduct an inspection. Such direction was complied with and the Special Officer filed a report stating, *inter alia*, that there were five damaged rooms on the first floor of the building with an open balcony. However, the actual

measurement of the area which was being occupied by the appellant being a tenant in the premises, was not indicated.

In view thereof and to resolve the dispute this Court by an order dated 23rd November, 2022 directed Mr. Srivastav to inspect the said premises in presence of the learned advocates of the appellant and the writ petitioner/respondent no. 5 herein and to submit a report along with a hand-made sketch map indicating the actual measurement of the area which was being occupied by the tenant.

By the said order it was also directed that the appellant shall engage an engineer, who shall be present on the date of inspection and the writ petitioner would also be at liberty to engage an engineer to aid and assist the Special Officer respectively.

Pursuant to such direction, an inspection was conducted by the Special Officer along with the respective engineers and the learned advocates and a report was filed before this Court on 12th December, 2022.

In the said report, the measurement of the first floor rooms which were under the occupation of the appellant, had been specifically indicated. The total measurement of the said rooms was found to be of 519 sq.ft.

From the report it further appears that during inspection the appellant claimed that he was also using a toilet and a kitchen space on verandah area.

In the said report, the Special Officer observed that *‘the claimed west side kitchen-space appearing to be on verandah area was damaged and destroyed in such manner that the possibility of measurement was not possible for the Engineers who declined to go there and the toilet space on the east corner was seen by me which appeared to be not more than about 50 Sq. Ft.’*

Mr. Das, learned advocate appearing for the appellant submits that over and above the measurement of the five rooms the appellant should be granted further space as he was also enjoying a kitchen-space on the verandah area and a toilet.

Mr. Das submits that for the kitchen-space on the verandah area and the toilet, a further area of 81 sq.ft. should be allotted in favour of the appellant over and above the 519 sq.ft. for the rooms which he was occupying. Such prayer has not been opposed by Mr. Banerjee.

In view thereof and recording such consent of the parties, the present appeal is disposed of directing that the respondent no. 5 shall make arrangement for the appellant's rehabilitation once a new building comes up on the same site. In the new building the appellant shall

be entitled to a total carpet area of 600 sq.ft. along with easementary rights.

It is further made clear that such direction shall be subject to the result of the eviction suit pending before the competent forum.

With the above observations and directions, the appeal is disposed of.

There shall, however, be no order as to costs.

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

(Partha Sarathi Chatterjee, J.) (Tapabrata Chakraborty, J.)