

D/L
Item No. 16
21.12.2022
KOLE

**MAT 2015 of 2022
With
IA No. CAN 1 of 2022**

**Snigdha Saha
-Vs.-
State of West Bengal & Ors.**

*Mr. Sarwar Jahan,
Mr. S. Chatterjee,*

...for the appellant.

Mr. Prasant Behari Mahata,

...for the State.

*Mr. Sayan Sinha,
Mr. Adil Naser,*

...for the Municipality.

*Mr. Amales Ray,
Ms. M. Bhowal,
Mr. A. Gupta,
Mr. I. Bhattacharyya,*

...for the respondent no. 9.

Leave is granted to the learned Advocate on record for the appellant to correct the cause title of the memorandum of appeal.

By consent of the parties the appeal and the application are taken up for hearing together.

A judgment and order dated November 28, 2022, whereby the appellant's writ petition was disposed of, is under challenge in the present appeal.

The appellant claims to be the tenant in respect of a portion of the concerned building. The ownership of the building changed hands. The new owner, according to the appellant, started disturbing the appellant's possession. The appellant filed a suit for declaration and injunction in the

Bongaon Court. Subsequently, the owner who is the respondent no. 9 in this appeal filed a suit for eviction of the appellant from the portion under her occupation. It appears that in such proceedings, the appellant claims to be in occupation of five rooms whereas the respondent no. 9 says that the appellant is in occupation of two rooms.

Alleging that the building in question is in a ruinous and dangerous state and that the Municipality was not acting on the representation made by him, the respondent no. 9 approached a learned Single Judge of this Court by filing WPA 2940 of 2022. Such representation was disposed of by the learned Judge by a judgment and order dated March 31, 2022 with the following directions:

“As such, the writ petition is disposed of with a direction upon the Board of Councilors of the Bongaon Municipality to act and proceed under Section 223(4) of the West Bengal Municipal Act, 1993, upon granting an opportunity of hearing to the petitioner as also to the respondent no. 5. The tenant must be accommodated in the newly constructed building in respect of an area proportionate to the area enjoyed by the tenant, so far. Of course, such reinstatement of the tenant shall be subject to the decision of the civil suit, which is pending between the parties.

The competent authority of the Bongaon Municipality shall pass necessary orders in accordance with law, as directed by this Court upon hearing the parties within a

period of four months from the date of communication of this order.”

It appears that pursuant to such order, the Municipality after holding hearing in terms of the statute, has passed an order for demolition of the building in question, in a portion of which the appellant claims to be the tenant. Challenging such demolition order the appellant approached the learned Single Judge in the present round of litigation.

The learned Single Judge disposed of the writ petition with the following observations:

“The Court is accordingly required to scrutinize the order impugned in the present writ petition. The impugned order was passed after giving reasonable opportunity of hearing to both the parties and upon perusal of the inspection report filed by the Sub-Assistant Engineer of the Municipality.

The specific finding is that the building is in a ruinous and inhabitable conditions. The same is required to be demolished.

In the earlier writ petition the Court preserved the right of the petitioner by directing that she must be accommodated in the newly constructed building in respect of an area proportionate to the area enjoyed by her. Such reinstatement shall be subject to the decision of the civil Court. The civil suit is subjudice.

The Court does find any apparent error or infirmity in the impugned order and accordingly refrains to exercise jurisdiction in the matter.

The order passed by the Municipality does not require any interference.

As last chance, the petitioner is directed to vacate the premises by December 30, 2022.”

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

Appearing for the appellant/writ petitioner, Mr. Jahan, says that the observation in the order dated March 31, 2022, to the effect that the reinstatement of the tenant shall be subject to the decision of the civil suit which is pending between the parties, is going to create huge problems for the appellant. Such observation may be interpreted to mean that only after disposal of the civil suit and that too in favour of the appellant, she will be reinstated. It is anybody's guess when the civil suits will be disposed of. Hence, by interpreting the aforesaid observation in the manner apprehended by the appellant, the owner of the reconstructed building may not reinstate the appellant in the portion that she was in occupation. Mr. Jahan says that it has been admitted by the owner in the civil suits that the appellant was in occupation of at least two rooms. Immediately upon construction of the new building, the appellant should be put in possession of two rooms. Further action may be taken depending on the result of the civil suits.

Learned Advocate further says that the aforesaid observation in the order passed in the earlier round of litigation has been reiterated by the learned Single Judge in the order under appeal.

We appreciate the concern of the appellant. Indeed, the aforesaid observation in the order dated March 31, 2022, as reiterated in the order under appeal, may be interpreted to mean that until the civil suits are disposed of in favour of the appellant, she will not be entitled to be put in possession of at least two rooms in the newly constructed building. However, the scope of this appeal is limited. We cannot modify or clarify the aforesaid observation made in the order dated March 31, 2022. We see no apparent infirmity in the order under appeal and hence, we do not interfere.

However, this will not prevent the appellant from approaching the learned Single Judge for modification or clarification of the order dated March 31, 2022, if she is so advised.

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

The appeal and the connected application are accordingly disposed of.

Urgent photostat certified copy of this order be supplied to the parties, if applied for, as early as possible.

(Apurba Sinha Ray, J.) (Arijit Banerjee, J.)