

APOT/120/2022
WITH
WPO/1830/2022
I.A.NO:GA/1/2022
GA/2/2022

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
ORIGINAL SIDE

DILIP KUMAR DAS & ANR.
VS
ARATI AGARWAL & ORS.

BEFORE:

The Hon'ble JUSTICE ARIJIT BANERJEE
The Hon'ble JUSTICE APURBA SINHA RAY
Date : 14TH SEPTEMBER, 2022

Appearance:

Mr. Gourab Ghosh, Advocate
...for appellants
Mr. Rupak Ghosh, Advocate
Mr. Abhijit Sarkar, Advocate
...for Respondent no.1
Ms. Sreemoyee Mitra, Advocate
....for CESC Ltd.

G.A.NO.1/2022

THE COURT: This is an application for condonation of delay of 8 days in filing the appeal. Causes shown being sufficient, the delay is condoned. G.A.No.1/2022 is disposed of.

G.A.NO.2/2022, APOT 120 OF 2022.

By consent of the parties, this appeal and the connected application are taken up for hearing.

This appeal is directed against the judgement and order dated May 5, 2022 whereby WPO/1830/2022 was disposed of.

The respondent No.1/writ petitioner claims to have purchased a property. The property is fully tenanted. To be precise, there are six tenants in different portions of the property. The writ petitioner says that the property is in a dilapidated and dangerous condition and requires to be demolished for the purpose of constructing a new building on the land in question.

Alleging that her representations to the Kolkata Municipal Corporation authorities were in vain, she approached this Court by filing WPO 228 of 2021. By an order dated July 20, 2021, a learned single Judge directed the Municipal Commissioner to consider the representation of the writ petitioner, give a hearing to all the concerned parties including the tenants of the said building and pass a reasoned order. Mr. Ghosh, learned Advocate appearing for the writ petitioner/respondent No.1 tells us that after hearing all the concerned parties, the Municipal Commissioner has passed an order to the effect that the building indeed requires demolition. Mr. Ghosh also raises a

grievance that in the earlier round of litigation, in spite of service of notice thrice on the tenants who were respondents in that writ petition, they never bothered to appear before the learned Judge.

The Municipal Commissioner had requested the present writ petitioner to submit a scheme for rehabilitating the tenants. She says that she submitted such scheme. Thereafter nothing progressed. Accordingly, the present round of litigation had to be initiated by her by filing WPO 1830/2022.

The learned single Judge considered the rehabilitation scheme proposed by the writ petitioner and found the same to be reasonable. It was submitted on behalf of the tenants that some of them are objecting to the proposed scheme. The learned single Judge recorded such objection but did not pay much heed thereto and, in our opinion, rightly so. The learned Judge recorded certain undertakings of the owner towards rehabilitating the tenants who will necessarily have to vacate the premises for the purpose of demolition and reconstruction. Detailed directions have been given by the learned Judge as to how the parties should proceed in the matter. Two months time was granted to the tenants to vacate the premises. The learned Judge has taken great pains to ensure that the interest of the tenants are fully protected.

However, being aggrieved, two out of six tenants have come up by way of this appeal.

On August 23, 2022, a co-ordinate Bench had recorded its prima facie view that the offer made by the landlord is reasonable and that the appellants are expected to take a reasonable stand. The matter was adjourned to enable the appellants to consider the matter.

Today, learned Advocate for the appellants files a supplementary affidavit. Let the same be taken on record. Annexed to the supplementary affidavit is a copy of an application under the RTI Act and the reply thereto. On the strength of such documents, the appellants contend that the concerned property is a thika property. This is strongly disputed by Mr. Ghosh, learned Advocate appearing for the writ petitioner. We are also not satisfied from the documents annexed to the supplementary affidavit that the concerned property is a thika property. No adjudication by the Thika Controller in this regard has been disclosed before us. The appellants pray for liberty to approach the appropriate authority for vindicating their claim that the concerned property is a thika property. We are of the view that no such leave is necessary. If they are entitled to in law, they can always approach the appropriate authority.

In so far as the order under appeal is concerned, we see absolutely no reason to interfere with the order. It is a well thought-out, reasoned and perfectly balanced order protecting the interest of all the concerned parties.

In view of the aforesaid, the appeal fails and is dismissed along with connected application for stay.

Since we have affirmed the order assailed before us the KMC authority and CESC authority shall carry out the directions in such order without unnecessary delay.

There will be no order as to costs.

(ARIJIT BANERJEE, J)

(APURBA SINHA RAY, J.)

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