

Item No.1

In The High Court At Calcutta
Constitutional Writ Jurisdiction
Appellate Side

24.04.2023
Ct-24

WPA 5457 of 2023
Sri Sanjit Ghoshal

v.

The State of West Bengal & Ors.

Mr. Manabendra Thakur
Mr. Partha Sarathi Das
... for the petitioner.

Mr. Suddhasatya Banerjee
Mr. Apurba Kumar Ghosh
... for the respondent nos. 6 & 7.

Mr. Susanta Pal
Mr. Ananya Neogi
... for the State.

Mr. Ayan Banerjee
Ms. Debasree Dhamali
... for Bally Municipality.

The order of demolition passed by the Bally Municipality in respect of construction made beyond the sanctioned plan and construction of additional floors without sanctioned plan has been sought to be implemented.

Learned advocate representing the persons responsible for making construction being the respondent nos. 6 & 7 submits, upon instruction that, a Title Suit being T.S. No. 1276 of 2022 has been filed by one of the occupiers of the 6th floor of the subject premises against the private respondents. Bally Municipality is also a party in the said Suit.

By order dated September 9, 2022 the learned Civil Judge (Junior Division), 1st Court at Howrah passed an order of ad-interim injunction restraining the defendant no. 1 i.e. the respondent no. 6 herein from dispossessing the plaintiff from the scheduled suit property without due process of law.

It has been submitted that as an order of injunction is pending in connection with the scheduled suit property, accordingly, the order of demolition ought not to be implemented at this stage.

From the facts recorded in the order passed by the learned Court below in the Title Suit on September 9, 2022 it appears that the plaintiff (Prince Kumar Singh) claims to be a monthly premises tenant by virtue of a tenancy agreement. The defendant no. 1 i.e. the private respondent no. 6 herein proposed to develop the suit property and entered into an agreement for rehabilitation with the plaintiff. The plaintiff was reinstated in the newly constructed building of the scheduled property. The defendant no. 1 was pressurizing the plaintiff to quit and vacate the suit property and hence the Suit was filed.

It appears that the plaintiff in the learned Court below did not mention in the plaint as regards the status of the structure in question. The suit scheduled property is an absolutely unauthorized construction which was made without obtaining a sanctioned plan and accordingly, the said unauthorized structure cannot be permitted to stand on the basis of an order of injunction passed by the Court.

Order may be passed in respect of a structure constructed in accordance with the provisions of law and

not in respect of any structure which has been constructed in an unauthorized manner without obtaining any sanction.

If the submission of the private respondents with regard to holding on to the structure till the order of injunction subsists is accepted by the Court, then the builders who raise construction in unauthorized manner will start entering into agreement with parties and thereafter collusively obtain order of injunction restraining the landlord/developer from evicting the tenant and by this manner the unauthorized construction will never be demolished. Any builder making construction in contravention of the statutory provision cannot take the aid of law to avoid the demolition proceeding.

The other contention of the private respondent is that as the Municipality has opined that there are deviations in the construction made, in the absence of a proper demolition sketch it will not be possible for the builder to identify the extent which is required to be demolished.

It appears from the submission made on behalf of the parties that the 5th and 6th floors of the building in question have been constructed without any sanction at all. The same is well known to the builder who raised the construction.

As regards the extent of deviation, the same is also well within the knowledge of the builder who raised the construction as any portion which has been constructed beyond the sanctioned plan is unauthorized.

In view of the above, the Municipality will be bound to comply with the order of demolition in accordance with law.

The Municipality shall immediately intimate the private respondent the charges payable for carrying out the demolition work. In the event, the person responsible for making construction fails to deposit the necessary charges or fails to demolish the unauthorized construction on his own, then, it will be open for the Municipality to proceed with the demolition and recover the demolition charges from the person responsible in accordance with law.

The writ petition stands disposed of.

Urgent certified photocopy of this order, if applied for, be supplied to the parties expeditiously on compliance of usual legal formalities.

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(Amrita Sinha, J.)