

D/L
Item No. 17
11.04.2023
KOLE

**MAT 619 of 2023
With
IA No. CAN 1 of 2023**

**Ramkrishna Nayak
-Vs.-
The State of West Bengal & Ors.**

*Mr. Amit Baram Dash,
Mr. Ankara Sarkar,*

...for the appellant.

*Mr. Debjit Mukherjee,
Mr. Susmita Chatterjee,*

...for the State.

*Mr. Jayanta Kumar Das,
Mr. Madhumanti Das,*

...for the municipality.

A judgment and order dated March 24, 2023, whereby the appellant's writ petition was disposed of is under challenge in this appeal.

It appears that the appellant is a tenant under the private respondent no. 9 in respect of the concerned premises. It appears that the building in question required demolition and the private respondent wanted to reconstruct the building. The private respondent filed an undertaking before the Learned Single Judge that in the reconstructed building he will offer 548 sq. ft. area to the appellant/writ petitioner on monthly rental basis as per market value for business purpose. The private respondent had also filed an undertaking before the learned Judge mentioning that he will construct a new building within two years from the date of demolition.

In the above factual background, the learned Single Judge disposed of the writ petition by recording as follows:-

“Learned Advocate for the petitioner is agreeable to the area of the room that will be provided to him in the newly constructed building. The petitioner seeks some time to vacate the tenanted premises.

The petitioner is granted time till 13th April, 2023 for vacating the portion which he is presently occupying so that the private respondent may take steps for demolition of the same and for construction of a new building thereon in accordance with the plan to be sanctioned by the Municipality.

The private respondent shall be obliged to hand over possession of the room in the newly constructed building to the petitioner in terms of the undertaking filed in Court.”

Being aggrieved, the writ petitioner has come up by way of this appeal.

From the affidavit of service filed in court today it does not appear that service has actually been effected on the private respondent. However, we do not wish to adjourn the hearing of the matter since we are not inclined to entertain the appeal.

From the impugned order it is clear that the appellant/writ petitioner was agreeable to accept 548 sq. ft. area in the building to be newly constructed after demolition of the existing building. The appellant sought some time to vacate the tenanted premises. Accordingly, the learned Judge granted him time till April 13, 2023.

In the above background, the appellant cannot have any legitimate grievance against the impugned order.

Learned Advocate for the appellant submits before us that the appellant was never agreeable to vacate the tenanted

premises. Only the Civil Court has the power under Section 6 (c) of the West Bengal Premises Tenancy Act, 1997, to direct the appellant to vacate the premises in question upon passing an eviction decree. We are not inclined to entertain such argument as the same was not advanced before the Learned Single Judge. The impugned order was based on concession and prayer of the writ petitioner and hence, in our opinion, no appeal would lie therefrom.

If the appellant is aggrieved by any incorrect recording in the impugned order, his remedy is to approach the learned Single Judge. We have to go by what is recorded in the order brought before us and we cannot accept any submission made on behalf of the appellant contrary to the submission of the appellant recorded in the impugned order.

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.)