

Item No. 12
08.06.2023
Court. No. 19
GB

C.O. 1679 of 2023

Sujaya Jaiswal
Vs.
M/s. Shreeram Developer & Ors.

*Mr. Pradip Mukherjee,
Ms. Chaitali Mukherjee,
Ms. Rima Banerjee*

...for the Petitioner.

The petitioner is aggrieved by the order passed by the learned Civil Judge (Senior Division), 3rd Court at Barasat, District 24 Parganas (North) dated August 17, 2022. By the said order, the learned court below recalled the writ issued to Mr. Farukh Khan, who was appointed as a commissioner to conduct the investigation of the suit property on the basis of a prayer made by the petitioner.

It also appears that the reason for recalling the writ was that the learned Special Officer was appointed by the High Court in an appeal and the Special Officer had submitted a report. The learned court rejected the prayer of local investigation on the ground that a further local investigation would amount to conflicting reports and the learned commissioner could not be directed to investigate further in respect of the deficiencies in the report of the learned Special Officer filed in the High Court.

The petitioner is the defendant in the suit and the owner of the suit property situated at L.R. Dag No.1312 of Mouza-Rahara under Khardah municipality. The plaintiffs

and the proforma defendants are the developers who entered into a development agreement with the petitioner. Dispute arose and a suit for declaration and injunction was filed being Title Suit No.459 of 2022 in the Court of the learned Civil Judge (Senior Division), 3rd Court at Barasat. An order of injunction was also passed restraining the petitioner from creating any disturbance or obstruction to the plaintiff and their men and agents from completing the multistoried building, in terms of the development agreement.

It appears that the said order of the learned lower appellate court was challenged and the same travelled to the High Court. In the appeal, a Special Officer was appointed to file a report on certain points. Such report was also filed by the learned Special Officer. Now, the petitioner/plaintiff has prayed for local investigation by an engineer commissioner, inter alia, on the points narrated below:-

- i) To go to the locale at 15 I.C. Road, P.S. Khardah at present Rahara, District North 24 Parganas, Kolkata 700118 and to note the nature and character of the multi storied building.
- ii) To note whether there are deviations in the construction of multistoried building at the suit property contrary to the sanctioned building plan.
- iii) To note in details the deviations, if any, with measurements of the said multi storied building.

- iv) To note details of the incomplete and remaining construction works of the owners allocations.
- v) To see whether the plaintiffs had the lawful authority and required permissions and licenses to construct the building. To collect such copies from the plaintiffs and proforma defendant.
- vi) To note in details whether there was any curtailment of the owners' allocation by the plaintiffs and proforma defendants in respect of the building.
- vii) To investigate the quality of the construction and to furnish expert opinion.
- viii) Local features to be pointed by the parties.

The relevant provision of Order XXVI, Rule 9 of the Code of Civil Procedure is quoted below:-

“Commissions to make local investigations-In any suit in which the Court deems a local investigation to be requisite or proper for the purpose of elucidating any matter in dispute, or of ascertaining the market-value of any property, or the amount of any mesne profits or damages or annual net profits, the Court may issue a commission to such person as it thinks fit directing him to make such investigation and to report thereon to the Court.”

The law provides that local investigation can be allowed for the purpose of elucidating any matter in dispute. The object of the local investigation is not to collect evidence which can be taken in the Court, but the purpose is to obtain

such evidence, which from its peculiar nature, can only be had on the spot with a view to elucidate any point, which is left doubtful on the evidence produced before the Court. Though exercise of these powers are discretionary with the Court, but in proper cases local investigation may be ordered with reference to the facts and circumstances of the case. It should be exercised so that a final and just decision is rendered in a case.

In the instant case, the dispute between the parties need not be elucidated by way of a local investigation at the instance of the defendant/land owner, especially on the points which have already been mentioned above. Moreover a special officer was already appointed and necessary report was filed. The learned trial court found that further investigation was to fill up the lacunae in the report of the learned special officer. The nature and character of the multistoried building, the deviations, if any, the measurements, quality of construction and the permission and licenses obtained by the developer can be brought on record by evidence. These are not peculiar features which can be ascertained only at the spot.

Thus, this Court is of the opinion that the application is not maintainable and the learned trial judge rightly rejected the prayer for local investigation. Reasoning may not be happy, but the ultimate conclusion of the learned trial judge is correct. Hence, there is no scope for entertaining the revisional application.

The revisional application is dismissed.

Urgent photostat certified copy of this order, if applied for, be given to the parties on priority basis.

(Shampa Sarkar, J.)