

26.09.2023
SL No.48
Court No.8
(gc)

**FMAT 436 of 2023
CAN 1 of 2023**

**Vinay Joldhari & Ors.
Vs.
Kedarnath Enterprises Pvt. Ltd. & Ors.**

Mr. Uday Narayan Betal,
Mr. Barun Chatterjee,
Mr. Kingsuk Mondal
...for the Appellants.

1. The appeal is arising out of an order dated 6th September, 2023 in connection with an application for injunction in a suit for declaration that the plaintiff company has every right to repair and/or construct and/or demolish the dangerous portion of the Schedule-A property under the supervision of ESE of KMC under Rule 3(2) (a), 3(2)(e) and under Section 410 of the KMC Act, 1980. The plaintiff has also prayed for permanent injunction restraining the defendants including their men, agents and associates from disturbing the plaintiff and their men from all sort of construction and/or demolition work at the suit property in accordance with sanction building plan issued by KMC.

2. The learned Trial Judge on the basis of the averments made in the plaint and the petition restrained the defendants from disturbing the plaintiff and their men from carrying out construction work in Schedule-A except Schedule-B to E till four weeks from the date of the order and the matter is made returnable on 4th October, 2023.
3. The appellants claimed to be the tenants/occupiers of the said building. It is submitted that by reason of the aforesaid order they may be dispossessed. In the petition, the petitioners have disclosed a rent control challan dated 24th July, 2023 to establish their tenancy. Apart from the said challan, no other document has been disclosed to show that they were inducted as tenants and they continued to remain as tenants in the suit property. However, in the event they are found to be in possession in Schedule-A, they cannot be dispossessed without due process of law. It is not clear as to whether they are in possession in respect of Schedule-A property. The nature and extent of occupation of the present appellants are given in Schedule B, C, D

and E in the plaint. If they are in possession of the said respective portion, then they cannot be the person affected by the impugned order.

4. In any event, the matter is made returnable on 4th October, 2023. It would be open for the appellants to file an application for recalling of the ad-interim ex parte order in the meantime and in the event any such application is filed, we would request the learned Trial Judge to consider such prayer independent of the application filed for injunction and on consideration of the said petition, may pass appropriate order.
5. It is needless to mention that in the event the application for vacating the interim order is filed, the Trial Court shall decide the matter uninfluenced by any observation made in this order.
6. We have also noticed that the interim order was only for a limited period of four weeks.
7. With the aforesaid observation, the appeal and the application are disposed of.
8. However, there shall be no order as to costs.

9. Urgent Photostat certified copy of this order, if applied for, be given to the parties on usual undertaking.

(Uday Kumar, J.)

(Soumen Sen, J.)