

02.03.2023
Sl. Nos.55 & 56
sdas

IN THE HIGH COURT AT CALCUTTA
Circuit Bench at Jalpaiguri

F. M. A. 4 of 2022
(CAN 1 of 2021)

[Sunil Agarwal & Anr. -Vs- The State of West Bengal & Ors.]

W I T H

W. P. A. 265 of 2021

[Jagdish Prasad Agarwal -Vs- The State of West Bengal & Ors.]

Mr. Subham Ghosh
Mr. Mayank Roy
... .. for the appellants

Mr. Debabrata Saha Roy
Mr. Pingal Bhattacharyya
Mr. Arnab Sengupta
Mr. Deborshi Dhar
... .. for the respondents

Mr. Pingal Bhattacharyya
... .. for the respondent no.1

Mr. P. Bhattacharyya
Ms. Aayushi Agarwal
... .. for the respondent no.22

Heard the learned Advocates for the respective parties.

Learned Advocate for the appellants submits that they are the tenants in the premises. As tenants they are entitled to rehabilitation in the event the owner makes reconstruction on an old and dilapidated structure.

Learned Advocate for the respondent no.1/writ petitioner-owner submits appellants are not tenants. They failed to obtain an order of injunction in their favour in the declaratory suit of 2018. The order in appeal directs the

decision of the respondent-Municipality to be implemented. It does not call for interference.

We have considered the impugned judgment as well as the pleadings of the parties. Respondent no.1/writ petitioner is the owner of a dilapidated building within Kurseong Municipality. He approached this court in W.P. No. 17742 (W) of 2018. A learned single Judge by order dated 27th September, 2018, inter alia, directed the Municipality to invoke the provision of Section 223 of the West Bengal Municipal Act, 1993 after giving an opportunity of hearing to the private parties including the appellants herein.

Section 223 of the West Bengal Municipal Act, 1993, inter alia, provides that the Board of Councillors of the Municipality if satisfied that the building is unable for human habitation and cannot at a reasonable expense be rendered fit, the same has to be demolished. In terms of the aforesaid provision, the Municipality after hearing the appellants took a decision dated 07.01.2022 to demolish the building. No steps were taken by the respondent-Municipality which compelled the owner/writ petitioner to approach this court again by way of subsequent writ petition being WPA 265 of 2021.

Upon hearing the parties, learned single Judge directed implementation of the demolition order within a stipulated time frame. Liberty was given to the respondents i.e. the appellants to take appropriate steps in accordance with law to protect their rights, if any.

It may not be out of place in the meantime the 1st appellant had sought for a declaration that he was tenant under the writ petitioner. Till date, no order has been passed protecting his possessory right in the premises let alone a prima facie finding that he is a tenant therein.

Learned Advocate for the appellant has harped on Rule 169 of the West Bengal Municipal (Building) Rules, 2007 (*hereinafter referred to as '2007 Rules'*) in support of his plea that the owner was duty bound to rehabilitate them in the new construction. Rule 169(1) is set out hereunder :-

“R.169. Old and Insecured Buildings. (1) Old Buildings of the Municipal area which are of age of more than 50 years or have been damaged by natural force like earthquake, fire etc. and which are partly or fully occupied by tenant will get special consideration in respect of their reconstruction as per opinion of the Board of Councillors provided the applicant is fully agreeable to rehabilitate all the tenants after reconstruction by providing the equivalent area under his possession before construction or otherwise upon mutual settlement with the tenants :

Provided that additional Floor Area Ratio to the tune of 100% will be allowed over and above the Floor Area Ratio being presently utilized in the existing structure/premises.”

A bare reading of the aforesaid Rule would show only a tenant in a dilapidated building is entitled to the protection of the said Rule. Appellant no.1 has filed a suit seeking a declaration to that effect but no order in his favour has been passed till date.

Appellant no.2 relies on a Memorandum of Agreement dated 19.10.2004.

We have gone through the said agreement. The agreement merely recognizes gratuitous occupation of appellant no.2 in the building. The said contractual arrangement by no stretch of imagination would elevate the stakes of 2nd appellant status to a tenant and entitle him to the protection as envisaged under Rule 169 of the 2007 Rules.

Accordingly, we are of the view no case for interference with the order impugned is made out. Respondent-Municipality is directed to implement its decision within eight weeks from date.

Appeal is accordingly, dismissed.

In view of dismissal of the appeal, CAN 1 of 2021 is also disposed of.

There shall be no order as to costs.

(Subhendu Samanta, J.)

(Joymalya Bagchi, J.)