

APO /6/2023
IA No.GA/1/2023
WPO/3211/2022

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
Original Side

VIKASH MIMANI & ANOTHER.
-Versus-
THE KOLKATA MUNICIPAL
CORPORATION AND ORS.

Appearance:

Mr. S.N. Mitra, Sr. Advocate
Mr. Arindam Banerjee, Advocate.
Mr. Saptarshi Datta, Advocate
Ms. Srinjita Ghosh, Advocate,
Mr. Pourush Kanti Pal, Advocate
...for the Appellant

Mr. Biswajit Mukherjee, Advocate
Ms. Tanushree Dasgupta, Advocate
for Kolkata Municipal Corporation. .

BEFORE:

The Hon'ble JUSTICE ARIJIT BANERJEE

The Hon'ble JUSTICE APURBA SINHA RAY

Date: February 9, 2023.

THE COURT: Let the affidavit of service filed in Court
today be kept with the records.

This appeal is directed against the judgment and order dated December 16, 2022 whereby the appellants' writ petition was in effect dismissed.

The appellants claim to have purchased a property at premises nos. 8A to 8H, Naresh Mitra Sarani, formerly known as 8A to 8H, Beltala Road, Kolkata- 700 025 and premises nos. 28B to 28D, Sakharam Ganesh Dauskar Sarani, formerly known as 28B to 28D, Townshend Road, Kolkata, 700 025.

The appellants say that when they applied for mutation in their names, they came to learn that certain persons are claiming to be thika tenants and some other person to be bharatias under them in respect of the concerned premises.

Proceedings were initiated before the Thika Controller. By an order dated March 14, 2019, the Thika controller, in exercise of his power under Section 5 of the West Bengal Thika Tenancy (Acquisition and Regulation) Act, 2001, passed an order declaring that some of the occupants of the concerned premises are thika tenants. The appellants have challenged such order before the West Bengal Land & Land Reforms

Tribunal by way of an original application. Such application is pending.

The appellants had written a letter dated August 16, 2022, addressed to the Municipal Commissioner and other officers of the Corporation requesting the Corporation not to grant mutation or sanction of any construction plan in favour of the persons, who have been declared to be thika tenants in respect of the concerned premises, without giving an opportunity of hearing to the appellants.

With the grievance that the Corporation did not respond to such letter and the appellants have information that some of the said thika tenants are surreptitiously approaching the Corporation authorities for mutation and sanction of building plan, the appellants approached the learned single Judge with the present writ petition.

The learned Judge disposed of the writ petition without passing any order in favour of the appellants. Hence this appeal.

Appearing for the appellants/writ petitioners Mr. Mitra, learned senior Advocate, says that the learned Judge failed to

appreciate that the writ petitioners did not pray for any order restraining the Corporation from granting mutation or sanction of building plan in favour of the persons claiming to be thika tenants. All that they asked for was that the Corporation, prior to granting mutation or sanction of building plan in favour of the so called thika tenants or any of them should grant an opportunity of hearing to the appellants, who are admittedly the owners of the concerned premises.

Mr. Mukherjee, learned Advocate appearing for the Corporation says that at least the thika tenants, who are parties to the original application pending before the Tribunal should have been made parties to the writ petition. After all, an order is being sought for from the Court which is likely to affect such persons.

In reply Mr. Mitra says that it has recently transpired that some of the thika tenants, who have been impleaded in the original application have passed away. There is some confusion as to which of them are still surviving and which of them are dead. Hence, they have not been made parties to the writ petition.

Having heard learned Counsel for the parties we are of the view that nobody will be prejudiced if the Corporation prior to sanctioning any building plan or mutating the name of any applicant as thika tenants in respect of the concerned premises, grants an opportunity of hearing to the appellants herein. We are not directing the Corporation to stay its hands and not to process an application for mutation or sanction of building plan at all. All we are saying is that at the time of processing such applications, if any, the appellants should be given an opportunity of being heard.

We have not gone into the merits of the case at all. The competent officer of the Corporation, before allowing any application for mutation or sanction of building plan touching the concerned premises, shall give an opportunity of hearing to the appellants or to their authorised representatives.

The appeal and the connected application are accordingly disposed of.

Since we have not called for affidavits, the allegations in the stay petition are deemed not to be admitted by the respondents.

(ARIJIT BANERJEE, J.)

(APURBA SINHA RAY, J.)

dg/