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ORDER SHEET
WPO No.1323 of 2023
IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
ORIGINAL SIDE

DEBABRATA GOSWAMI
-Versus-
KOLKATA MUNICIPAL CORPORATION & ORS.

BEFORE:
The Hon'ble JUSTICE AMRITA SINHA
Date:28th June, 2023.

Appearance:
Mr. Arijit Dey, Adv.
Ms. Pronoti Goswami, Adv.
...for the Petitioner.

Mr. Gurudas Mitra, Adv.
Mrs. Suranjan De Sarkar, Adv.
...for KMC.

The Court:- In this writ petition the petitioner, being the appellant before the Municipal Building Tribunal, Kolkata Municipal Corporation in B. T. Appeal No. 15 of 2023, seeks for a direction upon the Tribunal to proceed with the appeal as the same is pending for more than a decade.

It appears that the petitioner is aggrieved by an order of retention which was allowed in favour of the private respondents.

The private respondent nos. 5 to 10 in the instant writ petition claimed to be the owners of the subject property and the owners have in turn jointly engaged respondent no. 4, Sujan Kumar Roy Barman as developer of the property. Apart from the respondent nos. 5 to 10, there was one more individual namely, Arabinda Roy who also claimed himself to be one of the co-owners of the subject property.

The appeal cannot be proceeded further as the appellant before the Tribunal, i.e., the petitioner herein has failed to effect service upon the said Arabinda Roy.

Learned advocate representing the writ petitioner submits that from the orders passed by the Tribunal from time to time it will appear that the learned advocate, who represented the owners before the Tribunal, is presently representing the developer. None is appearing to represent the owners. The appeal is contested only by the developer.

Learned advocate representing the developer submitted before the Tribunal that Arabinda Roy expired. The same was recorded in the order dated 05.12.2022 passed by the Tribunal.

The writ petitioner is not aware of the death of Arabinda Roy nor is the petitioner aware of the heirs of the said Arabinda Roy. Learned advocate who was representing the said Arabinda Roy before the Tribunal, is presently representing the developer.

Under such circumstances the writ petitioner made paper publication on two occasions but even thereafter there is no representation on behalf of Arabinda Roy before the Tribunal.

The writ petitioner thereafter filed an application praying for expunging the name of Arabinda Roy from the array of respondents as due to non service upon Arabinda Roy the appeal cannot proceed. The prayer of the petitioner for expunging the name of Arabinda Roy has since been rejected by the Tribunal.

The petitioner is aggrieved by the same.

According to the petitioner, he is not aware of any details of Arabinda Roy, namely, his date of death or the name of his legal heirs. The appellant will not be in a position to substitute the legal heirs of the deceased and for want of the same the appeal cannot be heard.

From the submission made on behalf of the petitioner and the Corporation and upon perusal of the documents available on record it appears that ten years have already lapsed from the date of filing the appeal. As the learned advocate representing the developer has disclosed the fact of the death of Arabinda Roy before the Tribunal, accordingly, the aforesaid developer may be directed to provide the details of the deceased Arabinda Roy.

It further appears that there are other co-owners of the subject property. The other co-owners may also disclose the details of the legal heirs of Arabinda Roy so that necessary steps can be taken by the appellant for substitution of the deceased.

The appeal ought not to remain pending for so many years on account of non service of notice upon the respondents.

The Tribunal ought to take a positive decision with regard to the prayer of the petitioner for proceeding with the appeal. If the appeal can be proceeded in the presence of the other co-owners and the developer, then the Tribunal shall take steps to proceed with the same.

The Tribunal should also take note of the fact as many as two paper publications were made to bring the fact of pendency of the appeal to the

knowledge of all the necessary parties but none has come forward to oppose the prayer of the appellant.

The Tribunal shall also consider as to whether the appeal can be decided in the absence of Arabinda Roy as the other co-owners are represented before the Tribunal and the interest of the owners can be protected as the other co-owners are appearing.

Copy of the instant writ petition was sought to be served upon the respondent nos. 5 to 10 but the same has returned unserved with the postal endorsement 'door locked'.

The respondent no. 4, i.e., developer of the subject property, however, was served but none represented on behalf of the respondent no.4 in Court today.

It appears that the private respondents are not willing to contest the elections.

In such circumstances, it will be open for the Tribunal to take a decision as to whether the appeal can be proceeded in the absence of the owners as their interest is being duly protected by the developer who has an agreement with the owners for development of the subject property.

The Tribunal shall endeavour to dispose the appeal at the earliest but not later than 22.12.2023.

Writ petition stands disposed of.

Affidavit of service filed in Court today is taken on record.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties upon compliance of all legal formalities.

(AMRITA SINHA, J)

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