

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
ORIGINAL SIDE

APOT/356/2023
with
WPO/2346/2022
GA/1/2023

MD. NAZIM AND ORS.
VERSUS
M/S. MONOTONA MARKETING (P) LTD. AND ORS.

BEFORE:

The Hon'ble JUSTICE ARIJIT BANERJEE

AND

The Hon'ble JUSTICE APURBA SINHA RAY

Date : 5th October, 2023.

Appearance:

Md. Farhaduddin, Advocate,

Ms. Era Ghose, Advocate

...For the appellants.

Mr. Alok Kr. Ghosh, Advocate,

Mr. Subhrangsu Panda, Advocate

...for KMC.

Mr. Dhiraj Trivedi, Advocate

Mr. Pankan Ladia, Advocate,

Mr. Bikash Kr. Singh, Advocate,

Mr. Sunil Gupta, Advocate,

...For respondent no.1/writ petitioner.

Mr. Anand Farmania, Advocate,

Mr. Majoj Kr. Mondal, Advocate,

...For State Respondent.

The Court : This appeal is directed against an order dated September 5, 2023, which is interim in nature, in the sense that the writ petition is still pending before the learned single Judge.

The writ petitioner approached the learned single Judge, claiming to be the lessee in respect of premises nos. 27 and 31 of Ezra Street, with a right to look after and maintain the property at 26, Ezra Street, Kolkata, which is popularly known as the Parsi Fire Temple. This submission is strongly disputed by learned Advocate for the appellants. The case of the writ petitioner is that the temple needs to be preserved and conserved. For that purpose, Kolkata Municipal Corporation, the Heritage Conservation Committee of Kolkata Municipal Corporation and West Bengal State Heritage Commission have all been consulted and those expert bodies are working in tandem to preserve the temple. However, without demarcating the property, preservation and conservation of the Fire Temple cannot be undertaken. Accordingly, the writ petitioner prayed for leave to have the subject property demarcated as per the boundary mentioned in the Schedule of the relevant lease deed.

The learned Judge passed the following direction:

“It will be open for the petitioner to seek police help at the time of demarcation of the properties. The private respondents, the tenants and the occupiers of

the subject properties are directed to co-operate with the petitioner at the time of demarcation and they are restrained from raising any objection or standing in the way of demarcating the subject property.

Let a report of demarcation be placed before this Court on the adjourned date.

List on 5th October, 2023.”

Being aggrieved, the added respondents in the writ petition being respondent Nos. 15 to 20, have come up by way of this appeal.

The appellants say that they are lawful occupants in respect of various portions of premises no. 26, Ezra Street, Kolkata. Under the garb of preserving/conserving the Fire Temple and demarcating the subject property, their lawful right to occupy the portions of that property that they are in possession of, is sought to be interfered with. They have been carrying on business from the various portions which they lawfully occupy. Therefore, they are aggrieved by the order under appeal.

We have also heard Mr. Dwivedi, learned Advocate for the respondent/writ petitioner. He says that the Fire Temple is a heritage property. It needs to be

preserved/conserved in terms of Chapter XXIIIA of Kolkata Municipal Corporation Act, 1980 read with the provisions of West Bengal Heritage Commission Act, 2001. For that purpose, demarcation is essential and, in fact, demarcation has already been made. The appellants say that demarcation has not been done in accordance with the Schedule to the lease deed. This submission is strongly disputed by the learned Advocate for the respondent/writ petitioner. He says that the order sought to be assailed in this appeal has already been implemented. Hence nothing remains in the appeal. Learned Advocate for the appellants denies and disputes the submission made on behalf of the respondent/writ petitioner.

We are told that the writ petition is listed today before the learned Single Judge. Hence we are not inclined to interfere. We only clarify that the possession of the appellants in respect of portions of the concerned premises which they occupy shall not be interfered with excepting by following due process of law. All other points, the parties hereto will be at liberty to urge before the learned Single Judge.

We further clarify that we have not gone into the merits of the dispute between the parties. Learned Judge is requested to dispose of the writ petition in due course.

Both the appeal and the connected application are disposed of accordingly.

Since we have not called for affidavits, the allegations made in the stay application are deemed not to have been admitted by the respondents.

[ARIJIT BANERJEE, J.]

[APURBA SINHA RAY, J.]

dg/