

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Joymalya Bagchi

And

The Hon'ble Justice Gaurang Kanth

MAT 779 of 2024

CAN 1 of 2024

CAN 2 of 2024

Shyamal Kumar Banik & Ors.

Vs

Mrs. Lolita Lekha (nee Majumder) & Ors.

For the Appellant : Mr. Debashis Banerjee
Mr. Rakesh Jana

**For the writ petitioner/
Respondent** : Mr. Pratik Majumdar
Mr. Snehasish Dey

For the KMC : Mr. Alok Kr. Ghosh
Mr. Anand Farmania

For the State : Mr. Bibek Jyoti Basu
Mr. Uttam Kr. De

Heard on : 20.08.2024

Judgment on : 20.08.2024

Joymalya Bagchi, J.:-

1. Appellants are the shop owners whose shops are situated on the pavement in front of and adjacent to premises no. 130A NSC Bose Road Kolkata 700047. Predecessor-in-interest of a septuagenarian widow (the writ petitioner herein) was the owner of the said property. A portion of the

property i.e. 15 cottah stood vested in the State while remaining 7.5 cottah is presently owned by the writ petitioner. It is concluded the property is in the occupation of a club and there are unauthorized shop rooms on the pavement in front and adjacent to the said property.

2. In 2008 the writ petitioner took out a writ petition being WP 6765 (W) of 2008 inter alia seeking direction upon the Kolkata Municipal Corporation and Urban Land Ceiling department to demarcate her property and the vested land by metes and bounds. The Hon'ble Judge as His Lordship then was in order dated 28.04.2008 noted the submission of the State that if the writ petitioner intended to demarcate the property by engagement of an Amin, police authorities shall render assistance and directed the police to ensure that the nature, character and possession of the land is not altered. We are informed that the writ petition was subsequently dismissed for default.

3. Thereafter, the writ petitioner took out another writ petition being WP 25874(W) of 2010 directing removal of unauthorized construction on the pavement in front and adjacent to her land.

4. The said writ petition was disposed of by order dated 18.4.2011 wherein the corporation authorities were directed to take steps for removal of unauthorized construction on the pavement forthwith and not later than 60 days from the date of communication of the order.

5. It is alleged the appellants are the unauthorized occupants on the footpath in front of the property. They were not made parties in the aforesaid writ petition and were unaware of the order passed therein till

notices for their eviction were issued by Kolkata Municipal Corporation. Upon enquiry, they came to know in 2019 the present writ petition had been filed by the writ petitioner seeking implementation of the aforesaid orders passed in WP 25874(W) of 2010 and WP 6765 (W) of 2008 respectively. Though the local club who is in alleged illegal possession of the property was made a party, the appellants who are said to be in unauthorized occupation of the pavement in front and adjacent to the property were not made parties in the writ petition. They took out an application for addition of party and the Hon'ble Single Judge directed the application shall be heard along with the writ petition itself.

6. Being aggrieved by the said order the appellants carried an appeal before a co-ordinate Bench of this court being MAT 474 of 2022 and the Hon'ble co-ordinate Bench by order dated 11th March 2024, inter alia, directed the Hon'ble Judge to hear an application for addition of party prior to passing any substantive order on the writ petition which may adversely affect the appellants.

7. Pursuant thereto, the Hon'ble Judge by the impugned order dismissed the application for addition of party.

8. Learned counsel for the appellants contends the Hon'ble Judge failed to consider that the order directing removal of unauthorized construction on the pavement in WP 25874(W) of 2010 was passed behind their back and the writ petition seeking implementation of an order passed in 2011 was not maintainable in law.

9. On the other hand, learned counsel for the writ petitioner/respondent submits the appellants are trespassers and the order directing removal of their unauthorized constructions has become final and binding.

10. Having considered the rival submissions of the parties we note that the appellants are in settled possession of the structures for more than a decade. In WP 25874 (W) of 2010 they were not made parties and order directing removal of unauthorized construction from the pavement was passed behind their back. They came to know of the said order only upon notices for eviction being served upon them by the Corporation.

11. A necessary party in a legal proceeding is one against whom reliefs have been sought and in the absence of such party the proceeding is not maintainable. A proper party is one whose presence is desirable for a wholesome and effective disposal of the case, but non-joinder of the said party does not result in dismissal of the proceeding. Though a proceeding is maintainable without joining a proper party, if the said party takes out an application for addition of party it is desirable to add him as a party for effective adjudication of the case and in the interest of justice. For example, if a proper party is not added to the proceeding, the said party may take out an independent action touching the matter in issue resulting in multiplicity of proceedings.

12. Appellants may not be necessary parties as no relief has been sought against them. But implementation of the order passed in WP 25874 (W) of 2010 would entail their dislodgement from settled possession. It is

trite even a rank trespasser in settled possession has to be evicted through due process of law. When a subsequent writ petition is filed seeking implementation of order of removal passed in an earlier writ petition, appellants who are sought to be dislodged from settled possession ought to be added as proper parties since their presence would aid the Court to arrive at a complete and effective decision in the proceeding and avoid multiplicity of proceedings. On the other hand, if the appellants are not added as parties, it would give opportunity to them to take out independent legal action against the notices of eviction resulting in multiplicity of proceedings.

13. We are further inclined to hold in favour of the appellants as the issue of maintainability of the writ petition itself which was instituted after a lapse of eight years to seek execution of an order of removal passed in 2011 has been raised.

14. The Hon'ble Single Judge failed to consider these aspects and dismissed the application for addition of party by going into the merits of the legal right of the appellants to continue in possession. The question whether the appellants ought to be evicted by implementing an order passed in 2011 is an issue to be decided in the writ petition and the strength of appellants' case to resist such prayer is to be decided on merits during hearing of the writ petition and cannot be a ground to refuse their prayer for addition of party to the proceeding itself.

15. It is also apposite to note that the alleged trespasser on the land, namely, the local club has been made a party in the writ petition does not

stand on a higher footing than the appellants whose prayer for addition of party has been dismissed.

16. For these reasons we set aside the order dismissing the prayer for addition of party and direct that the appellants shall be added party respondents in the writ petition.

17. Amendment to the writ petition shall be carried out within seven days from date.

18. Appellants shall file their affidavit-in-opposition to the writ petition within two weeks from date. Reply if any shall be fielded one week thereafter.

19. This direction is peremptory and in the event the appellants fail to submit their affidavit-in-opposition no further extension shall be granted.

20. Liberty is also granted to the respondent/writ petitioner to pray for early hearing.

I agree.

(Gaurang Kanth, J.)

(Joymalya Bagchi, J.)