

24.06.2024
Item No.39
Court No.11
Avijit Mitra

WPLRT 83 of 2024

**Smt. Maya Sarkar
- Versus -
Swapan Mukherjee & ors.**

Mr. Gopal Ghosh,
Mr. Sibasis Ghosh,
Mr. Dwarika Nath Mukherjee,
Mr. Abhijit Basu
...for the petitioner
Mr. Sk. Md. Galib,
Mr. Ali Siddique Mallik
....for the State
Mr. Puspendu Chakraborty
...for the respondent nos. 3 to 5
Mr. Suman Dey
...for the respondent nos. 1, 6 and 7

Affidavit-of-service filed by the petitioner be kept on record.

The present application has been preferred challenging an order dated 20th May, 2024 passed by the learned Tribunal in the original application (hereinafter referred to as OA), being OA No.1375 of 2020 (LRTT).

Records reveal that the OA was filed challenging *inter alia* an order dated 14th September, 2019 passed by the Controller, Thika Tenancy in Misc. Case No.70 of 2018. In connection with the said OA, a miscellaneous application was preferred by applicants/respondents being MA 479 of 2024. The said application was heard on 20th May, 2024 and made returnable on 21st August, 2024 with liberty to the original applicant to submit affidavit-in-opposition, if

any. Till the said returnable date, both the parties were directed to maintain *status quo* with respect to the possession/construction, if any.

Mr. Ghosh, learned advocate appearing for the petitioner submits that the impugned order was passed without granting an appropriate opportunity of hearing to the petitioner and without ascertaining who are in possession of the subject property.

He argues that without arriving at any *prima facie* finding that the parameters towards grant of an *interim* order stand satisfied, the learned Tribunal erred in law in granting the *interim* protection.

He contends that though in the MA there was no averment as regards continuance of any construction in the subject property, the learned Tribunal erroneously directed the parties to maintain *status quo* as regards construction.

Drawing the attention of this Court to the averments made in MA 479 of 2024, the learned advocate appearing for the private respondents submits that the original applicant had entered into an agreement for development and is trying to create third party interest.

The factum of execution of the development agreement could not be disputed by Mr. Ghosh.

In the said conspectus and upon granting liberty to the petitioner to submit an affidavit-in-opposition to the MA, the matter had been fixed for further hearing on 21st

August, 2024 and to avoid future complications, the parties had been directed to maintain *status quo* with respect to the possession/construction, if any till the returnable date.

We do not find any infirmity in such direction and as such no interference is called for.

The writ petition is, accordingly, dismissed.

Needless to observe, the MA shall be disposed of by the learned Tribunal without being influenced by the observations made in this order.

There shall, however, be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be given to the learned advocates for the parties.

(Partha Sarathi Chatterjee, J.) (Tapabrata Chakraborty, J.)