

**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

***M. A. T. 1270 of 2024
(CAN 1 of 2024)***

***Vinay Kumar Shraff & Anr.
-Vs-
Municipal Commissioner & Ors.***

For the Appellants	:	Mr. Abhratosh Majumder, Sr. Adv. Ms. Priya Sarah Paul, Adv. Mr. Dev Kumar Agarwal, Adv.
For the KMC	:	Mr. Achintya Banerjee, Adv. Mr. Atis Kumar Biswas, Adv.
For Respondent Nos. 4 & 5	:	Mr. Joyak Kumar Gupta, Adv. Mr. Pawan Kumar Jajodia, Adv.
For the State	:	Mr. Asish Kumar Guha, Adv. Mr. Anirban Datta, Adv.
Heard on	:	23.09.2024
Judgment on	:	23.09.2024

Joymalya Bagchi, J. :-

1. Appellants are aggrieved by the impugned order whereby the matter was remitted to the civil court on the premise that the dispute *inter se* is private in nature.

2. Factual matrix giving rise to the dispute is as follows :-

3. Appellants are the owners of Flat No.2A at 18/1 Dover Place (formerly 18/1 Garcha First Lane), Dover Apartment, Kolkata – 700 019. Private respondent nos.4 & 5 are the owners of other flats in the said multi-storied building. They had purchased flats from one Vikram Sen and Jayanti Shome (respondent no.6 herein) who were the owners of the property. It is the grievance of the appellants that they are being denied access to the roof of the building by private respondent nos.4 & 5.

4. In light of such submission, reports by the Kolkata Municipal Corporation and police authorities were placed before the Hon'ble Single Judge. Upon perusing the reports, Hon'ble Single Judge observed a tin shed structure beyond sanctioned plan has been constructed on the roof of the building. Hon'ble Single Judge also noted the submission of respondent nos.4 & 5 that the southern part of the roof had been sold to them prior to purchase of the flats by the appellants. Noting these facts the Hon'ble Single Judge remitted the matter to the civil court for agitating the right of the appellants with regard to access to the terrace of the building.

5. Mr. Abhratosh Majumder for the appellants contends the roof is a part of the common facilities in the apartment. All flat owners are entitled to free access and enjoyment of the roof. In support of his submission, he refers to Rules 117(4) and 124(2) of the Kolkata Municipal Corporation

Building Rules, 2009 (*hereinafter referred to as 'Building Rules of 2009'*) and Rule 4.2 of the National Building Code of India.

6. Learned Advocate for the private respondent nos.4 & 5 contends only the southern portion of the roof had been sold to them. Remaining terrace constitutes common facilities and there is no violation of the Building Rules of 2009 or the National Building Code of India.

7. Learned Advocate for the Kolkata Municipal Corporation contends the tin shed structure has been constructed on the terrace without permission. However, appellants have access to the open terrace through the northern door of the apartment.

8. We have considered the rival submissions of the parties.

9. It is nobody's case the entire terrace of the apartment has been sold to private respondent nos.4 & 5. Only the southern portion of the terrace had been conveyed to them through registered deeds in 2004 and 2011. Building Rules promulgated in 2009, inter alia, provide every terrace on the topmost storey of a building shall have common access and shall not be sub-divided. Northern portion of the roof constituted common facilities at the time when the appellants purchased the property. Respondent nos.4 & 5 contend access of the appellants to the open terrace in the northern portion is unhindered.

10. In such view of the matter, we are of the opinion there is no violation of the Building Rules of 2009 or the National Building Code of India with regard to free access to the open terrace on the topmost storey

of the apartment. Requirement of a general exit for fire safety purposes envisaged under Section 124(2) of the Building Rules of 2009 and Rule 4.2.1 of the National Building Code of India has also been substantially addressed.

11. Accordingly, we are of the opinion there is no violation of the statutory rules as canvassed by Mr. Abhratosh Majumder which would necessitate interference in public law jurisdiction.

12. It is open to the Kolkata Municipal Corporation to take necessary steps in accordance with law with regard to the tin shed structure which was set up in the open terrace without requisite permission.

13. With these observations, appeal is disposed of.

14. In view of disposal of the appeal, connected application being CAN 1 of 2024 is also disposed of.

15. There shall be no order as to costs.

16. Photostat certified copy of this judgment, if applied for, be given to the parties on compliance of all formalities.

I agree.

(Gaurang Kanth, J.)

(Joymalya Bagchi, J.)

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