

20.08.2024

Item No. 29

Ct. no.2

b.r.

WPA 18848 of 2024

Smt. Mithu Ghosh & Ors.

-Vs.

The State of West Bengal & Ors.

Mr. Krishna Das Poddar

... For the Petitioners.

Mr. Amitavo Ghosh

Mr. Tapas Kumar Dey

.... For the respondent no.8.

On the urgency pleaded on behalf of the petitioners and in view of the determination being assigned before this Court this writ petition has been taken up for consideration by publishing the same in the daily cause list.

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

Mr. Krishna Das Poddar, learned advocate, appears for the petitioners.

Mr. Amitavo Ghosh, learned counsel, appears for the respondent no.8.

Rests of the respondents are not represented including the Bidhannagar Municipality, despite notice.

The petitioners claimed to be purchases of their respective flats at **Premises No. 1/13, East Mall Road, Kolkata 700080 (for short, the premises).**

Referring to a demolition order passed by the Bidhannagar Municipality dated **July 26, 2019**, as submitted by the learned counsel appearing for the petitioners, the demolition process has been initiated and the relevant construction at the ground floor which were beyond the sanctioned plan have already been demolished on **July 19, 2024**. On a scrutiny of the said demolition order **annexure p-1 at page-19** to the writ petition, it appears to this Court that several other portions of the building have been constructed or erected without authority of law as the same are beyond the sanctioned plan. The common area required to be kept vacant under the law has also not been kept vacant, as it appears from the said impugned order. The petitioners claim that they have purchased flats from the developers and the owner of the premises in the **year 2016**. Referring to the provisions laid down under **Section 266 of the West Bengal Municipal Corporation Act, 2006** and the explanation thereunder, learned advocate for the petitioners submits that the occupiers also had a right of hearing before passing the said impugned order of demolition.

In the light of the above submissions, the petitioners contend that the order of demolition dated **July 26, 2019** is bad in law as the same was passed without following the relevant statutory provisions. The petitioners being the occupiers of the premises were not

granted opportunity of hearing and therefore following the said impugned order of demolition, the demolition process which has been initiated and partly carried out on **July 19, 2024** is bad in law and not tenable.

Mr. Amitavo Ghosh, learned counsel appearing for the respondent no.8, submits that, his client is the owner of the adjacent property. Mr. Ghosh also takes the point of limitation to challenge the said impugned order of demolition.

Neither the developers nor the owner of this premises are represented.

Considering the submissions made on behalf of the petitioners and on perusal of the materials on record, it appears to this Court that **Sub-Section 3 to Section 266 of the said 2006 Act** provides for statutory appeal. The admitted fact is, as submitted on behalf of the petitioners that, the petitioners purchased their flats in **2016** and the impugned order of demolition was passed in **2019**, though the proceeding was started in **2014**. Several factual matrix are required to be gone into to assess the said impugned order of demolition being **annexure p-1** to the writ petition. The appellate authority is the just forum. The impugned order was of **2019**, the petitioners came into possession of the property **in 2016** and the instant writ petition has been filed in **2024** and alleged steps for demolition taken by the Municipality in the **month of July 2024**.

Considering all these materials on record, this Court is of the firm view that, this writ petition should not be entertained.

Accordingly, this writ petition **WPA 18848 of 2024** stands **dismissed**, without any order as to costs.

However, if the petitioners in law are eligible to prefer the statutory appeal from the said impugned order of demolition in terms of **Sub-Section 3 to Section 266 of the said 2006 Act**, subject to its maintainability, can prefer such appeal but not later than **two weeks** from date.

In the event, such an appeal is preferred by the petitioners, the appellate authority shall decide the same strictly in accordance with law and without being influenced by any observation made by this Court, as expeditiously as possible.

It is made clear that, this order shall not create any right or equity in favour of the petitioners if the petitioners do not succeed to their claim strictly in accordance with law.

Photostat certified copy of this order, if applied for, be furnished expeditiously.

(Aniruddha Roy, J.)