

HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION

Present:

THE HON'BLE JUSTICE JOYMALYA BAGCHI
&
THE HON'BLE JUSTICE GAURANG KANTH

MAT 1609 of 2024
CAN 1 of 2024
CAN 2 of 2024
CAN 3 of 2024

Deepak Shaw
Vs.
Sri Sekhar Majhi & Ors.

For the appellant : Mr. Kartick Kr. Bhattacharyya
Ms. Soumashree Dutta
Ms. Papiya Naskar

For respondent nos. 1 & 2 : Mr. Balaram Neogi

Heard on : 02.9.2024

Judgment on : 02.9.2024

Joymalya Bagchi, J:

1. Appellant claims to be the joint owner of the unauthorised construction which has been directed to be demolished by the Hon'ble Single Judge in the impugned order. Appellant contends he was not made a party in the writ petition being W.P.A. No. 20375 of 2023 wherein the said direction was given and no opportunity of hearing was advanced to him either by the Board of Councillors or the Hon'ble Single Judge. Accordingly, the application for leave to appeal is allowed.

2. Respondents / writ petitioners are co-owners of the property.

3. Father of the writ petitioners gifted a portion of the property comprising of 15 Chittacks 30 Sq. ft. to one Sambhu Majhi, since deceased. The said Sambhu Majhi made an illegal construction on the gifted land and a notice was issued upon him by the concerned municipality to show-cause why the unauthorised construction shall not be demolished. Sambhu Majhi participated in the said proceeding and demolition order came to be passed. The demolition order was assailed by Sambhu Majhi in a civil suit under Section 218(3) of the West Bengal Municipality Act, 1993 before the learned Civil Judge. During pendency of the said suit Sambhu Majhi died and the substitution application of his legal heirs was also dismissed for default in 2019. In 2021, appellant and one Bikram Saw purchased the property in question. Admittedly, the appellant is not residing in the property which is in occupation of the said Bikram Saw.

4. Under such circumstances, Municipality after issuing notice to one said Bikram Saw (who was in occupation of the unauthorised construction) by order dated 25.11.2022 directed him to demolish the said construction within thirty days. The order was reiterated on 22.2.2023. At this stage, the respondents / writ petitioners came to this Court seeking implementation of the demolition order and the impugned directions were issued by the Hon'ble Single Judge. It is the grievance of the appellant that he is the co-owner of the building and had not been given an opportunity of hearing by the municipality concerned.

5. We find little substance in his submission. Demolition order was passed in 2009 after giving an opportunity of hearing to the erstwhile owner i.e. Sambhu Majhi. In fact, the erstwhile owner had filed a suit challenging the demolition order which subsequently came to be dismissed due to non prosecution by his legal heirs in

2019. Thereafter, the appellant had purchased the property from the said legal heirs of Sambhu Majhi. By no stretch of imagination, he can be said to be the owner of the property when the demolition order came to be passed. Admittedly, appellant is not in possession of the property which was in occupation of the other co-owner namely Bikram Saw. Accordingly, notices were issued upon the said occupant namely, Bikram Saw to implement the demolition order passed in 2009. Issuance of notice upon Bikram Saw was merely to notify him to vacate and demolish the property in question. Execution of the demolition order passed in 2009 cannot be deemed to be a notice under Section 218(1) of West Bengal Municipality Act, 1993.

6. Under such circumstances, we are of the opinion, the prayer of the appellant to claim a fresh hearing for implementation of a demolition order which had been passed in 2009 when he was not an owner of the property is clearly misconceived.

7. Accordingly, the appeal is dismissed alongwith all connected applications.

8. Urgent certified website copy of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

I agree,

(Gaurang Kanth, J.)

(Joymalya Bagchi, J.)