

26.09.2024
ct. 6/SI. No.1&12
tkm

RVW 272 of 2024
CAN 1 of 2024
Umesh Prasad Singh & Ors.
Vs
Suvojit Gupta & Ors.
In
MAT 1928 of 2023
CAN 1 of 2023

Mr. Rajdeep Bhattacharya
Mr. Habibur Rahaman
Mr. MIA Lodhi

....for the applicants in RVW 272/24

Mr. Rahul Karmakar
Mr. Monotosh Naskar
Mr. Soewel Bhattacharjee
Ms. Diya Kanjee

....for the appellant in MAT 1928/23

Mr. Bikram Banerjee
Mr. Shalini Ghosh
Ms. Sagarika Goswami

....for respondent no. 6 & 7

Mr. Ritesh Kr. Ganguly

....for the State

Mr. Sirsanya Bandyopadhyay
Mr. Tirthankar Dey
Mr. Arka Kr. Nag

....for the BMC

1. Applicants are the subsequent purchasers of flats in unauthorized property. They contend they purchased flats from the appellant/promoter against valuable consideration. They were not aware that the building is an unauthorized one. Accordingly, they pray for review of the order.

2. Learned counsel for the respondent corporation contends appellants being subsequent purchasers of flats in the unauthorized construction do not have right of hearing with regard to its demolition. They may be given time to vacate the premises.

3. We have considered the submissions of the learned counsel for the applicants. Apart from making desperate submissions for sympathy, no document or material is placed on record to justify the unauthorized construction. For reasons recorded in our order, this court held not only was the construction unauthorized, appellant/promoter had relied on fake and fabricated documents justifying the same.

4. Under such circumstances the appeal was dismissed and direction was given for conducting further investigation with regard to manufacture and use of forged plan in the proceeding. Exemplary costs were also imposed on the appellant. No manifest error is apparent on the face of record which necessitates interference in review jurisdiction.

5. The only issue which is canvassed is that the flat owners may be given an opportunity of hearing. This prayer is clearly misconceived for the following reasons.

6. In the first instance the flat owners admit that the construction is an unauthorized one. They do not claim to justify the said construction but seek to make out a case of dishonesty at the end of the promoter. It is argued this court in exercise of equitable jurisdiction may direct payment of compensation for the wrongful loss suffered by them due to the deceitful acts of the promoter. It is pertinent to note that this court has already directed further investigation with regard to role of the appellant/promoter.

7. It is open to the applicants/flat owners to institute appropriate proceedings for compensation against the

promoter in accordance with law. However, such plea cannot be a ground to review our earlier order.

8. Finally it is argued that some time may be given to the flat owners to vacate the premises. It is contended that they are occupying the flats for long and their families constitute old and ailing persons.

9. Purely on humanitarian consideration we direct the applicants/flat owners to file undertaking before this court that they shall vacate the unauthorized premises within three months from date.

10. In the event the said undertaking is furnished in this court within a week from date, the respondent corporation shall stay their hands to implement the demolition order for three months from date. However, if the flat owners failed to file such undertaking within the time stipulated, the demolition order shall be implemented in accordance with law.

11. With this clarification review petition is dismissed.

12. Prayer is made on behalf of the appellant that he may be permitted further time to deposit costs.

13. Costs must be deposited positively by 5th November 2024.

(Gaurang Kanth J.)

(Joymalya Bagchi, J.)