

Item No.9
19.09.2024
Court. No. 551
GB

W.P.A. 19114 of 2012
With
CAN 1 of 2015 (Old No. CAN 6109 of 2015)

Tapan Das & Ors.
Vs.
The State of West Bengal & Ors.

Mr. Debasish Das

...for the Petitioners.

*Mr. Swapan Kumar Datta,
Mr. Tapas Mondal*

...for the State.

*Mr. Jayanta Kumar Das,
Ms. Madhumanti Das*

...for the Respondent Nos.2 & 3.

Mr. Bharat Ch. Simai

...for the Respondent No.4.

1. Affidavit-of-service as filed in Court today, is taken on record.
2. In this writ petition, the writ petitioners have prayed for issuance of a writ of mandamus upon the respondents, more specifically upon the respondent nos.2 and 3 to initiate the process of demolition as per provision of Section 223 of the West Bengal Municipal Act, 1993 (hereinafter referred to as the 'said Act of 1993 in short) for demolition of the house of the petitioners standing over R. S. Plot Nos.1850 and 1851, Hal Plot Nos. 2850 and 2851 Khatian No.1670/1 in Mouza – Kasba Egra under Ward No.7 under the jurisdiction of the Egra Municipality in District - Purba Medinipur.

3. In course of his submission, learned advocate for the writ petitioners at the very outset draws attention of this Court to Page No.22 of the instant writ petition being a copy of letter dated 15.01.2003 as written by the writ petitioners addressed to the respondent no.3 requesting him to cause an inspection of their abovementioned premises apprehending that the said building is standing in a dangerous condition and there is every possibility that it may collapse at any time.
4. Drawing attention to Page No.23 of the instant writ petition being a copy of letter dated 21.05.2004 as written by the respondent no.3, it is submitted that pursuant to the request made by the writ petitioners, an inspection was conducted by the officials of the respondent no.3, municipality and pursuant to such inspection the aforementioned building of the petitioners was declared as condemned and accordingly, the said notice dated 21.05.2004 was served upon the writ petitioners as well as upon the private respondent nos.4 and 5, who are allegedly tenants in respect of the said alleged condemned building.
5. It is the grievance of the writ petitioners that despite such declaration of condemn building, the respondent nos.3 and 2 being the Chairman and the Board of Councillors of the Egra Municipality are not taking

any steps for initiating a proceeding under Section 223 of the said Act of 1993. It is further submitted on behalf of the writ petitioners that since the building in question is occupied by the private respondent no.4, no repairing could be done.

6. It is the further grievance of the writ petitioners that taking advantage of lackadaisical attitude of the respondent nos.2 and 3, the private respondent no.4 also made an attempt to erect an illegal structure inside the said condemned building which was, however, subsequently prevented by the respondent nos.2 and 3 on receipt of a complaint of the writ petitioners.
7. It is further argued on behalf of the writ petitioners that the contention of the private respondent nos.4 and 5 as made by them in their affidavit-in-opposition, is absolutely incorrect since the notice of demolition has been served upon the private respondents. It is further contended that from the annexures to the affidavit-in-reply as filed by the writ petitioners, it would reveal that the suit for eviction as has been instituted against the private respondents and/or their predecessor-in-interest was subsequently withdrawn.
8. Per contra, learned advocate for the private respondent no.4 submits before this Court that the writ petitioners with ulterior motive are making an

attempt to evict the private respondents from the said building ignoring their tenancy right in respect of the said premises. It is further submitted that the writ petitioners should not be permitted to utilize the plenary power of this Court for eviction of the private respondents especially when there is a special Statute dealing with subject of eviction of tenant. It is further submitted on behalf of the private respondent no.4 that the instant writ petition is not maintainable in its present form and the same may be dismissed.

9. In course of his submission, learned advocate for the respondent nos.2 and 3 though admits that under cover of a letter dated 21.05.2004 both the writ petitioners and the private respondents were informed that the building in question has been declared condemned by the Board of Councillors of the Egra Municipality, but he could not justify as to what prevented the respondent nos.3 and 2 to initiate a proceeding under Section 223 of the said Act of 1993.
10. The learned advocate for the State, however, submits that the writ petitioners have filed the instant writ petition with the sole intention to evict the private respondents who are the lawful tenants in respect of the property in question.
11. Upon consideration of the entire materials as placed before this Court and after giving due consideration

over the submissions of the learned advocates for the contending parties, it appears to this Court that admittedly pursuant to a notice dated 15.01.2003 as given by the writ petitioners to the respondent nos.3 and 2, being the Egra Municipality and its Board of Councillors through their officials took inspection of the property in question and came to a finding that the building in question is condemned and the Board of Councillors being the respondent no.2 herein declared the said building as condemned on 23.04.2003.

12. At this juncture, I propose to look to the provision of Section 223 of the said Act of 1993 which is quoted below:-

“223. Power to order demolition of buildings, dangerous, ruinous or unfit for human habitation. – (1) *Where the Board of Councillors, upon any information in its possession, is satisfied that any building is unfit for human habitation and is not capable, at a reasonable expense, of being rendered fit, it shall serve upon the owner of the building and upon any other person having an interest in the building, whether as lessee, mortgagee or otherwise, a notice to show cause within such time as may be specified in the notice as to why an order of demolition of the building should not be made.*

(2) If any of the persons upon whom a notice has been served under sub-section (1) appears, in pursuance thereof, before the Board of Councillors and gives an undertaking that such person shall, within a period specified by the Board of Councillors, execute such work of improvement in relation to the building as will, in the opinion of the Board of Councillors, render the building fit for human habitation or that the building shall not be used for human habitation until the Board of Councillors, on being satisfied that it has been

rendered fit for human habitation, cancels the undertaking, the Board of Councillors shall not make an order of demolition of the building.

(3) If no such undertaking as if referred to in sub-section (2) is given or if, in a case where any such undertaking has been given, any work of improvement to which the undertaking relates is not carried out within the specified period or the building is used in contravention of the terms of the undertaking, the Board of Councillors shall forthwith make an order of demolition of the building requiring that the building shall be vacated within such period, not being less than sixty days from the date of the order, as may be specified in the order, and demolished within ninety days after the expiration of that period.

(4) Where an order of demolition of a building under this section has been made, the owner of the building or any other person having an interest therein shall demolish the building within the period specified in the order, and if the building is not demolished within such period, the Board of Councillors shall demolish the building and sell the materials thereof.

(5) Any expenses incurred by the Board of Councillors under sub-section (4), which cannot be met out of the proceeds of sale of materials of the building, shall be recovered from the owner of the building or any other person having an interest therein as an arrear of tax under this Act.

(6) In determining, for the purposes of this section, whether a building is unfit for human habitation, regard shall be had to its condition in respect of the following matter, that is to say, -

- (a) repair;*
- (b) stability;*
- (c) freedom from damp;*
- (d) natural light and air;*
- (e) water supply;*
- (f) drainage and sanitary conveniences;*
- (g) facilities for storage, preparation and cooking of food and for the disposal of rubbish, filth and other polluted matter;*

and the building shall be deemed to be unfit as aforesaid if it is so defective in one or more of the matters as aforesaid that it is not reasonably suitable for occupation in that condition

(7) For the purposes of this section, "work of improvement" in relation to a

building shall include any one or more of the following works, namely –

- (a) necessary repairs;*
- (b) structural alterations;*
- (c) provision of light points and water taps;*
- (d) construction of drains, open or covered;*
- (e) provision of latrines and urinals;*
- (f) provision of additional or improved fixtures and fittings;*
- (g) opening up or paving of courtyard;*
- (h) removal of rubbish, filth and other polluted and obnoxious matter;*
- (i) any other work, including the demolition of any building or any part thereof, which, in the opinion of the Board of Councillors, if necessary for executing any of the works specified in clauses (a) to (h)."*

13. On perusal of the provision of Section 223 of the said Act of 1993, it appears to this Court that the legislatures in their own wisdom have empowered the Board of Councillors to declare a building unfit for human habitation and is not capable at a reasonable expense of being rendered fit, after serving notice upon the owner of the building and upon any other person having an interest in the building whether a lessee, mortgagee or otherwise.
14. The aforesaid Section further postulates that Board of Councillors have also been empowered to come to a conclusion that the said building has become fit for human habitation upon execution of work of repairing or improvement and then the said Board of Councillors may again declare the said building fit for human habitation and permit the owner and occupier to occupy the building once again.

15. Sub-Section 3 of Section 223 of the said Act of 1993 clearly postulates that in the event no improvement is carried out in respect of the unfit building, the Board of Councillors have every authority to get the building vacated after making an order of demolition.
16. Coming to the factual aspects of this case, it reveals that pursuant to a notice given by the writ petitioners, the respondent nos.2 and 3 authority had caused inspection of the building in question and come to a finding that the building in question is condemned in nature and they had issued notice to the writ petitioners as well as the private respondents to vacate the said premises in question. No materials have been placed before this Court that repairing has been done either by the writ petitioners or by the private respondents after issuance of notice dated 21.05.2004 by the respondent nos.2 and 3 which has been duly received both by the writ petitioners and the private respondents. No explanation is forthcoming as to what prevented the respondent nos.2 and 3 to initiate a proceeding under Section 223 of the said Act of 1993 even after service of notice as mentioned above.
17. In course of his submission, learned advocate for the private respondent no.4 though was very vocal with regard to the tenancy right of the private respondents over the property in question, however, it is settled law that tenancy right cannot be extinguished on

account of demolition of a building and the same subsists even if a new building is erected over the plot of land where the tenanted premises was situated.

18. Such being the position, this Court finds sufficient merit in the instant writ petition and accordingly, the writ petition is hereby allowed.

19. The respondent nos.3 and 2, that is, the Chairman and Board of Councillors of the Egra Municipality are directed to initiate a proceeding under Section 223 of the said Act of 1993 in respect of the subject condemned building after serving due notice upon the writ petitioners and the private respondents and after hearing both of them shall thereafter pass a reasoned order, in accordance with law.

20. It is further ordered that the respondent nos.3 and 2 shall conclude the entire process, that is, initiation of a proceeding under Section 223 of the said Act of 1993, service of notice upon the writ petitioners and the private respondents, hearing of the writ petitioner and the private respondents, passing of the reasoned order and communication thereof to the writ petitioners and the private respondents positively within the last date of December, 2024. The respondent nos.3 and 2 are hereby directed to act on the server copy of this order.

21. To avoid any further delay, this Court directs the writ petitioners as well as the private respondents to appear before the respondent no.3 positively on

September 30, 2024 at 12' o clock noon along with the server copy of this order and on such appearance, both the respondent nos.3 and 2 shall fix a date of hearing of the proceeding under Section 223 of the said Act of 1993 in the presence of the writ petitioners and the private respondents. Both the writ petitioners and the private respondents shall provide their email addresses to the respondent no.3 in writing.

22. In the event, the private respondents do not appear before the respondent no.3 on the day and time fixed by this Court, there is no requirement on the part of the respondent nos.3 and 2 to serve any notice upon the private respondents regarding the initiation of the proceedings as quoted hereinabove.

23. With the aforementioned observations, the instant writ petition along with the connected application is disposed of.

24. Urgent xerox certified copy of this order, if applied for, be given to the parties on priority basis.

(Partha Sarathi Sen, J.)