

OD 13

WPO/116/2024
IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
ORIGINAL SIDE

SANJEEV SANYAL AND ANR.
VS
THE DIRECTOR GENERAL,
WEST BENGAL FIRE AND EMERGENCY SERVICES,
GOVERNMENT OF WEST BENGAL AND ORS.

BEFORE:

The Hon'ble JUSTICE SABYASACHI BHATTACHARYYA

Date: 26th February, 2024.

Appearance:

Mr. Rajarshi Dutta, Adv.

Mr. V.V.V. Sastry, Adv.

Mr. Rahul Poddar, Adv.

...for the petitioner

Mr. Susovan Sengupta, Adv.

Mr. Subir Pal, Adv.

...for the State

Ms. Micky Chowdhary, Adv.

Mr. Pratyush Chatterjee, Adv.

...for the respondent no.3

Ms. Sucharita Ray, Adv.

...for the respondent no.5

The Court: Affidavit of service filed today be kept on record.

The petitioner, one of the flat owners in a particular apartment, is allegedly in a precarious position. Although the petitioner has purchased a flat in the said apartment, the petitioner cannot take up occupation there because of non-

issuance of occupancy certificate. The petitioner had approached the consumer forum which culminated in an award against the respondent no.5-developer directing the latter to issue an occupancy certificate, which has not been done.

Learned counsel for the petitioner contends that the award has been put into execution.

In the meantime, however, a notice has been given, inter alia, to the petitioner under Section 35 of the West Bengal Fire Service Act, 1950, which casts liability, inter alia, on the petitioner as well for non-compliance of fire safety measures.

As such, the petitioner has sought in the writ petition a direction on the respondent no.1 authority for an inspection and a report as regards the requirements which are needed to be complied with in respect of the building-in-question vis-à-vis fire safety measures.

Learned counsel for the respondents controverts the allegations made in the writ petition.

Learned counsel for the respondent no.5 submits that the petitioner is not a registered owner.

An objection as to maintainability of the writ petition is also raised by the learned counsel for the respondent no.1.

Be that as it may, the remedy of the petitioner lies in the execution proceeding for the purpose of getting an occupancy certificate and thereafter to take necessary steps independently as a flat owner, subject to the petitioner having such rights regarding the flat in question, in respect of fire safety measures.

In order to implement the rights of the petitioner against the respondent no.5-developer, the appropriate remedy before the petitioner is not before the writ court but before the competent civil court having jurisdiction.

The primary reliefs sought in the writ petition are actually in the nature of interim reliefs, since an inspection by the respondent no.1 with regard to the fire safety measures required to be taken would not, by itself, serve any fruitful purpose but can only be granted in aid of a final relief, which can only be claimed against the respondent no.5 by way of a civil suit.

In such view of the matter, there is no scope of entertaining the present writ petition. Accordingly, WPO/116/2024 is disposed of with liberty to the petitioner to approach the appropriate forum / Court for the reliefs as claimed by the petitioner.

It is made clear that since no affidavit has been invited, it is deemed that none of the allegations made in the writ petition are admitted by the respondents. This Court has not gone into the merits of the contentions between the parties.

No order as to costs.

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

(SABYASACHI BHATTACHARYYA, J.)