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ORDER SHEET
WPO No.136 of 2024
IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
ORIGINAL SIDE

DEBABRATA GOSWAMI
-Versus-
THE KOLKATA MUNICIPAL CORPORATION & ORS.

BEFORE:
The Hon'ble JUSTICE AMRITA SINHA
Date: 12th March, 2024.

Appearance:
Mr. Arijit Dey, Adv.
Ms. Pronoti Ghoswami, Adv.
...for Petitioner.

Mr. Gurudas Mitra, Adv.
Mrs. Suranjana De Sarkar, Adv.
...for KMC.

Mr. Prasenjit Mukherjee, Adv.
Mr. Sankha Subhra Ray, Adv.
Mr. Ahitagni Dey, Adv.
...for Respondent Nos. 5 to 10.

Mr. Sanjib Bandyopadhyay, Adv.
Mr. Alokasis Bandyopadhyay, Adv.
Mr. Nabhajit Prasad Basu, Adv.
Mr. Monoj Kumar Mondal, Adv.
Mr. Sarbasis Bandyopadhyay, Adv.
...for Respondent No.4.

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

From the documents annexed to the writ petition, it appears that an application for addition of party was filed by the private respondent nos. 5, 6, 7, 8, 9 and 10 along with one Arabinda Roy before the Municipal Building Tribunal. All the parties claimed themselves to be co-owners of the premises no.10D, Seven Tanks Lane, Ward No.02, Borough-I. The Tribunal allowed the application for addition of party and the appeal was being heard.

The said Arabinda Roy expired during the pendency of the appeal. The petitioner is not aware of the details of the heirs of the deceased Arabinda Roy. The other co-owners of the subject property deliberately neither disclosed nor intimated the petitioner the details of the heirs of the deceased Arabinda Roy, because of which the petitioner was not in a

position to take out the application for substitution. The petitioner prayed for deciding the appeal in the absence of the deceased Arabinda Roy as other co-owners of the subject property were duly represented by the learned advocate.

The Tribunal dismissed the appeal on the ground of non compliance of the direction passed by the Tribunal holding that any order relating to the conclusion of the disputes in the absence of the legal heirs of deceased Arabinda Roy shall make the final decision in the appeal infructuous and illegal. The Tribunal observed that the petitioner was trying to force the Tribunal to hear out the appeal on merits without complying the legal duties as laid down in the Civil Procedure Code.

It appears that the Tribunal failed to appreciate that it was for the other co-owners of the property to disclose the names of the heirs of the deceased co-owner so that the heir(s) may be substituted in the pending appeal in place and stead of the deceased co-owner. The petitioner is unaware of the details of the legal heirs of the deceased and the petitioner, accordingly, prayed before the Tribunal for deciding the matter on merits in absentia of the heir(s) of the deceased.

It appears that the developer and the other co-owners of the property are contesting the appeal and the appeal may proceed in the presence of the parties who are already on record. In the event the heirs of late Arabinda Roy are made known to the petitioner by the parties who are already on record, then the petitioner shall take steps for impleading the heirs. If the heirs of the deceased are not made known to the petitioner, then the appeal shall proceed on merits in between the parties already on record and the name of the deceased Arabinda Roy be expunged from the cause title of the appeal.

The Tribunal ought to appreciate that the appeal in question is pending for more than ten years and the same ought not to be dismissed on hyper technical ground.

The Tribunal is directed to decide the appeal on merits after hearing the submissions made on behalf of the appearing parties at the earliest, but positively within a period of three months from the date of communication of this order.

The respondent nos. 4 to 10 are directed to intimate the learned advocate for the petitioner their current address and phone numbers so that further communication may be made at the said address.

Report filed by the Sinthi Police Station signed on 12.03.2024 and the report filed by the engineers of the Corporation, Building Department, Borough – I signed on 06.03.2024 be retained with the records.

The impugned order stands set aside and the writ petition stands disposed of.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties, upon compliance of all legal formalities.

(AMRITA SINHA, J.)

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