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Ct.3.

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

WPA 850 of 2025
With
CAN 1 of 2025

Md. Tofijul Hoque
Versus
The State of West Bengal & Ors.

Mr. Debabrata Mondal
Ms. Sreetama Neogi
... For the petitioner.

Ms. Sharmita Datta Das
.... For the State.

Mr. Achintya Kumar Banerjee
Ms. Dipanwita Ganguly
... For the KMC

Mr. R. N. Chakraborty
... For the applicants in CAN 1 of
2025.

1. The petitioner seeks for enforcement of the demolition order vide Demolition Case No. D-44/Br-VII/20-21.

2. Records would reveal that the petitioner had previously moved this Court for enforcement of the demolition order in WPA 24263 of 2022. The above writ petition was taken up for consideration and the Coordinate Bench by its order dated 12th June, 2023 had been pleased to dispose of the said writ petition by inter alia observing as follows:

“It has been submitted that there is no other alternative on the part of the police to vacate the

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unauthorized portions of the premises other than using force.

The construction in question is an illegal one and facing an order of demolition. The same cannot be permitted to stand because the occupants of the unauthorized construction refused to vacate the same.

It is for the police to take appropriate measures for vacating the subject structure which is required to be demolished.

As last chance the matter stands adjourned till 29th June, 2023 for demolishing the unauthorized construction.

In the event, the police fails to vacate the subject structure, then serious consequences will follow and the Court will be constrained to initiate proceeding against the police officers who failed to act in accordance with the provisions of law.

The men and agents of the Corporation shall take prompt necessary steps to demolish the portions constructed illegally as soon as the portions are vacated by the police.

Let a report be placed before this Court both by the police and the Corporation on June 30, 2023 when the matter will appear in the list marked "For Orders".

The Deputy Commissioner of Police, South Suburban Division shall fix up the date for

vacating and intimate the same to the Corporation, so that the men and agents of the Corporation are present at the spot for implementing the order of demolition.

Report filed by the Kolkata Municipal Corporation in Court today is taken on record”.

3. An appeal was preferred there from. The Hon’ble Division Bench of this Court by noting that there are orders of injunction against the Corporation passed by a competent Court in civil suits, was of the view that the Corporation shall not be able to give effect to the demolition order without first getting such injunction orders vacated.

4. Parties have placed before this Court the subsisting interim order passed by the civil Court in T.S. 817 of 2023.

5. Although, Mr. Chakraborty, learned advocate has come up by way of an intervention application and would seek intervention in this writ petition on the ground that the applicants are the flat owner in respect of the building where the demolition order has been passed and are entitled to challenge the same, however, I find upon going through the materials on record that the applicants in the instant application has claimed that the applicants are occupier of the premises in question where a demolition order has already been passed. It is not the case of the applicants that the applicants are either the person responsible or had constructed the property. The

applicants are the subsequent purchasers. It is not in dispute that there is no completion certificate issued by the Kolkata Municipal Corporation. In fact, there is no sanctioned building plan for the property in question. The interveners as caveatemptors were obliged to make an enquiry before purchasing the property in question. Since, the applicants had chosen to purchase the illegally constructed building, the applicants cannot be given premium therefor and cannot be permitted to retain possession on such illegally constructed building. It is, however, a different issue that an order of civil Court is subsisting. The subsistence of an order of civil Court in my view cannot permit the applicants to intervene in the present case. The same may, however, be set up as a defense in a collateral proceeding by the applicants to resist demolition order so long the interim order passed by the Civil Court survives, though the same cannot be used to challenge the demolition order. The application being CAN 1 of 2025 is thus, dismissed.

6. Insofar as the writ petition is concerned, since there is a subsisting civil Court's order, there is no scope for this Court to allow the writ petition at this stage. The same is also accordingly dismissed.

7. Although, Mr. Chakraborty would insist that this Court should observe that the learned civil Court should not be swayed by the observation made in the writ petition and the intervention application, I am of the view

that the scope of the writ petition and the suit is entirely different and, as such, the civil Court being swayed by any of the observations made herein cannot and does not arise.

(Raja Basu Chowdhury, J.)