

SK. Manwar Ali

Vs

State of West Bengal and Another

Criminal Miscellaneous Petition No. 5401 of 1985

(CJI R. S. Pathak, M. H. Kania JJ)

03.09.1987

ORDER

1. From the record it is clear that the appellant, Sk. Manwar Ali, has failed to put back respondent 2 Niyamat Shah, in possession of premises on the first floor of the reconstructed building having an area equivalent to the area of the premises in the tenancy of respondent 2 in the building before reconstruction as agreed under Clause 1 of the consent terms in spite of having undertaken to comply with the said consent terms filed on August 16, 1983.

2. In order to ensure compliance with the aforesaid Clause 1, it is directed that the Official Receiver of the High Court of Calcutta is appointed Receiver of the first floor of the said premises, No. 151, Park Street, Calcutta. The Receiver shall act immediately upon the communication of this order and shall take charge as the Receiver of the aforesaid first floor of the premises in question. We are informed by counsel for both the sides that there are two tenants in occupation of portions of the first floor of the said building but an area comprising about 416 sq. ft. on the said floor is still under the occupation of the appellant. In this portion, respondent 2, Niyamat Shah, is in possession of the keys of some rooms admeasuring in all less than 416 sq. ft. The said keys be handed over by Niyamat Shah to the Receiver. The Receiver will thereafter hand over the said entire area of 416 sq. ft to Niyamat Shah who will be entitled to remain in possession of the said premises. The Receiver shall not disturb the possession of the two aforesaid tenants in the first floor. The Receiver will apply to the Calcutta Electricity Supply Corporation for installing a separate meter within the aforesaid portion of the first floor to be handed over to Niyamat Shah to enable Niyamat Shah to get an independent supply of electricity in the said premises. The Official Receiver will also apply to the Calcutta Municipal Corporation for a water connection for supplying water for domestic consumption to the premises to be hand over to Niyamat Shah. The Receiver will get a water line or lines laid in the said premises and get fixed three taps - one in the kitchen one in the bathroom and the third one in the latrine. If the Receiver finds that the water supply pressure from the Corporation ferrule to the said portion of the premises is not sufficient for automatic lift of water up to the first floor then the Receiver will get constructed an overhead tank as well as an underground tank, the said overhead tank to be constructed on the terrace of the existing top floor of the building in question. The tanks shall be only of such sizes as required for supply of water to the premises to be handed over to Niyamat Shah. The said pipelines and the tanks shall be fixed by the Receiver in such a manner as to cause the least possible interference in the user of the rest of the premises. The said arrangement of water supply shall be dismantled and removed when the appellant completes the construction of the entire building and obtains the requisite water supply from the Calcutta Municipal Corporation and connects the pipelines on the first floor of the said premises to enable water supply to be maintained to the premises to be given to Niyamat Shah. The aforesaid arrangement for supply of water to the said portion of the premises shall continue till the appellant

completes the construction and makes arrangements for proper water supply to the said premises.

3. The Official Receiver shall take such steps, if any, as may be necessary for making the premises to be handed over to Niyamat Shah habitable and shall make such constructions after obtaining requisite permissions from the concerned authorities to ensure that Niyamat Shah gets two rooms, one kitchen one bathroom and one latrine in the said premises. We hope that the Calcutta Municipal Corporation will not decline to permit arrangements for water supply as aforesaid on the ground of any unauthorised construction put up by the appellant for which respondent 2 is not responsible.

4. This order shall not in any manner permit the appellant to make any construction in the said building in violation of any plan or rule or regulation of the Calcutta Municipal Corporation nor will it compel the Calcutta Municipal Corporation to desist from taking any action for violation of any rules and regulations which it might otherwise be entitled to take. In particular, we clarify that the Municipal Corporation will be free to take such action as open to it in law against the appellant in the circumstances so warrant.

5. Respondent 2 will put the Receiver in funds in the first instance to get the aforesaid work done as early as possible. The Receiver shall recover the costs of the aforesaid work from the appellant by such proceedings as may be open to him in law and, on recovery of the same, reimburse respondent 2 from the same after deduction of his costs, charges and expenses. The appellant, his servants and agents are directed not to obstruct in any manner the carrying out of the aforesaid work and are directed to sign such application and other papers as may be required for carrying out the aforesaid work.

6. It is clarified that after respondent 2 Niyamat Shah is put in possession of the aforesaid area of 416 sq. feet on the first floor of the said building and the premises handed over to him are made habitable, he will pay to the Receiver the rent amount for the use and occupation of the premises as agreed to between the appellant and respondent 2 or failing that as may be determined by the Receiver who will fix the amount taking into account the amount agreed to be paid as rent under the terms agreed to between the parties or the rent payable for the said premises in accordance with law. Liberty to the Receiver to make an interim report, and in any event he will submit a report after carrying out the aforesaid order.

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