

SUPREME COURT OF INDIA

Ram Gopal Saraf

Vs.

Municipal Commissioner, Calcutta Municipal Corporation

I.A. No.1 of 1990 In S.L.P.(Civil) No.1352 of 1986

(L. M. Sharma and K. Ramaswamy, JJ.)

30.08.1990

ORDER:-

1. The present applicants, six in number, were occupying as tenants different portions of a building belonging to the respondents Nos. 5 and 6, which was directed by the Calcutta Municipal Corporation to be demolished on the ground of its old age. The applicants challenged the order in the City Civil Court, Calcutta, and the matter was ultimately disposed of on compromise. According to the compromise decree, the applicants were to vacate the premises on certain conditions; and since, according to the case of the applicants, the landlords had defaulted in performing their part of the agreement, the applicants moved the Calcutta High Court with a writ petition under Article 226 of the Constitution. The writ case was dismissed by the High Court and the applicants came to this Court by a petition under Article 136 of the Constitution, which was registered as S.L.P. (Civil) No. 1352 of 1986. The case was disposed of by a short order dated 11-2-1986, under which the applicants were required to vacate the premises on the condition that the respondents would be re-inducting them as their tenants in a portion of the new building after its construction. However, there was some dispute between the parties and the matter had to be considered by this Court on more than one occasion and ultimately the applicants vacated the property in 1986. Soon thereafter the construction of the new building on the old site started and, according to the case of the applicants, even after substantial part of the construction was completed and they became entitled to re-entry, the respondents wrongly denied their claim and they had to approach this Court once more. Ultimately on 6-4-1989 a Bench of this Court passed the following order:-

"In view of the affidavit submitted by the respondents that the building is not yet ready and pray for one year's time to comply with the undertaking given earlier, one year's time is granted to comply with the undertaking. It is made clear that the undertaking must be complied with within that time and no further time will be granted.

Civil Misc. Petition is disposed of accordingly."

2. The present interlocutory application has been filed by the applicants alleging that although the landlords have taken fresh tenants in the building, the applicants have been denied re-induction. Under the agreed terms, five of the applicants should have been accommodated in the second floor and the remaining one applicant in the third floor, and, according to their case, the respondents have already built more than five floors and inducted new tenants.

3. We have heard the learned counsel for the parties at some length and agree with the applicants that the landlords are illegally denying the applicants their lawful rights.

4. The learned counsel for the respondents has stated that on account of an order of injunction issued against them at the instance of one of their neighbours resulting in serious harassment and shortage of money, the building is still incomplete in the circumstances they have no alternative but to take fresh tenants on higher rate of rent before they can oblige the applicants. It is, however, admitted by the learned counsel before us that a large area on the second floor of the building is still unoccupied. Their objection is that some additional work is yet to be completed in that area, and the applicants, therefore, cannot claim possession at present. The landlords also want higher rate of rent and further contend that under the terms of the agreement the claim of the applicants is confined to areas equivalent to those in their possession earlier in the old house which has now been demolished. It is, therefore, necessary to determine the precise area before they are allowed to take possession.

5. Mr. Shankar Kumar Ghose, the learned counsel for the applicants has pointed out that the rent has been fixed in the agreement to be at the rate of 80 paise per sq. ft. including the Municipal Corporation rate and taxes, and it cannot now be revised on account of some litigation by the respondents' neighbour. So far the areas are concerned, it is argued that on the pretext of demarcation of the equivalent areas the respondents are merely delaying the entry of the applicants in the building.

6. We have considered the affidavits filed by the parties and relevant circumstances leading to the present dispute and are of the view that the landlords are not bona fide resisting the claim of the applicants, and are delaying the entire process on one excuse or the other. We, therefore, direct the

District Judge, Alipore to take all suitable steps forthwith to put the applicants in possession of the respective appropriate areas in the building in question and if it becomes necessary, police aid may be taken. If the determination of the precise areas delays the proceedings, the District Judge shall take a tentative decision about the same and put the applicants in possession without delay. He will thereafter take up the question of demarcating the different areas with precision and shall direct the applicants to occupy their respective areas after final demarcation, and to vacate the additional areas. The respondents will also be entitled to move the learned District Judge for a direction in regard to the completion of the further construction, if any, within the areas, in possession of which the applicants are put, in the first instance in pursuance of the tentative decision of the District Judge, and the District Judge will issue appropriate orders thereon. In other words, the immediate possession of the applicants will be subject to any modification in regard to the areas and further direction to be issued by the District Judge, passed after hearing both the sides and taking into account all the relevant materials relied upon by the parties.

7. The application is accordingly disposed of.

Order accordingly.

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