

(2019) 09 CAL CK 0277

In the Calcutta High Court

Case No : Adms. C. Appl Order (FMAT) No. 256 Of 2019, Civil Application (CAN)
No. 2820 Of 2019

Ajit Kumar Sarkar

APPELLANT

Vs

Durga Pada Roy

RESPONDENT

Date of Decision : 23-09-2019

Acts Referred:

Kolkata Municipal Corporation Act, 1980 — Section 411(1)

Citation : (2019) 09 CAL CK 0277

Hon'ble Judges : Soumen Sen, J;Saugata Bhattacharyya, J

Bench : Division Bench

Advocate : Samiran Giri, Goutam Chakraborty, Alak Kr. Ghosh, S.K. Debnath

Final Decision : Disposed Of

Judgement

This appeal is directed against an order dated 30th January, 2019 passed by the learned 13th Bench, City Civil Court at Kolkata, in Title Suit No.494 of 2018 in connection with an application for injunction.

The plaintiff is a tenant under the first defendant in respect of a room described in the scheduled 'b' property. The grievance of the plaintiff was that the landlord with a view to raise re-construction in place of a scheduled 'a' property is trying to vacate him without entering with an agreement with the first defendant in order to protect his tenancy rights after the construction. The 2nd and 3rd defendants are said to be the promoters engaged by the landlord. Trouble begun with issuance of a notice under Section 411(1) of the KMC Act directed the part of the building needs adequate repairing.

Plaintiff alleged that the private defendants armed with the KMC notice have stepped up their efforts and try to forcibly vacate the plaintiff by bringing down the entire structure. The learned Judge has considered the notice issued by the KMC as well as the obligation of the landlord to carry necessary repair and renovation in order to make the property habitable. The Court was guided by the

experience at times the unscrupulous landlord take recourse to KMC notice under Section 411(1) of the KMC Act to vacate the tenant from the suit property. KMC is the statutory authority to decide the nature and condition of the building whether it requires immediate demolition. A person resisting the demolition has to demonstrate that a reasonable repair would be protected the tenancy right and the notice under Section 411(1) of the KMC was issued with an oblique purpose. However, we find any such findings in the order passed by the learned Trial Judge that the tenant had in the past requested the landlord to repair the premises or that the building could be saved when demolition as the obligation is of the owner to keep the property safe and to carry out the direction of KMC. The notice under Section 411(1) of the KMC Act is not under challenge. While we permit the appellant to stay in the premises without changing the nature and character of the suit property as permitted by the Trial Judge we make it clear that this order should not be construed to be interpreted as a bar upon the KMC to exercise its power under Section 411(1) of the KMC Act in accordance with law. The notice under Section 411(1) is not under challenge.

Mr. Goutam Chakraborty, learned Advocate appearing on behalf of the respondent had submitted that the KMC may not take any step without informing the respondent and respondent will be at liberty to challenge the action of the KMC if situation so demands. It is not desirable to us to dwell on the said issue, as we have not been invited to decide the question as to whether KMC was justified in issuing the notice under Section 411(1) of the KMC Act. Accordingly, we do not wish to make any comment on the said notice.

Since no affidavits are called for, allegations made in the application are deemed to have been denied.

Hence, the appeal and connection applications are disposed of.

Urgent Photostat certified copy of this order, if applied for, be given to the parties on usual undertaking.