

(2020) 03 CAL CK 0051

In the Calcutta High Court

Case No : Tender Of Mand Appl (MAT) No. 1556 Of 2017 With Civil Application
(CAN) No. 9331, 9335 Of 2017

Amit Dhandhanias & Ors

APPELLANT

Vs

State Of West Bengal & Ors

RESPONDENT

Date of Decision : 02-03-2020

Acts Referred:

Constitution Of India, 1950 — Article 226

Citation : (2020) 03 CAL CK 0051

Hon'ble Judges : Sanjib Banerjee, J;Hiranmay Bhattacharyya, J

Bench : Division Bench

Advocate : Reetobroto Kumar Mitra, Sakya Sen, Amritlal Chatterjee, Anki Sureka, Soumitra Ganguly, Sayan Ganguly

Final Decision : Disposed Of

Judgement

CAN 9331 of 2017

In view of the good grounds shown, the delay of about 80 days in preferring the appeal is condoned and the appeal is taken up.

CAN 9331 of 2017 is disposed of.

MAT 1556 of 2017

With

CAN 9335 of 2017

The appeal arises out of an order dated May 15, 2017 passed on a petition under Article 226 of the Constitution.

According to the appellants, they are the owners of a property at 14C, Maulana Abul Kalam Azad Road, Howrah - 711101. The appellants say that

a lease in respect of a part of the premises was executed in favour of the seventh

respondent herein. According to the appellants, the seventh respondent subsequently purported to take control of the entirety of the premises and, despite acknowledging the appellants as the owners of the property, has gone on to obtain a sarai licence to run a guest house at the property without obtaining any no-objection or prior permission from the appellants.

The writ petition was filed to complain of the State's action in granting the sarai licence to the seventh respondent to run a guest house at the

Howrah property without making any enquiry as to the ownership of the property or obtaining any prior permission from the owner of the property.

The seventh respondent claims that though the printed form in which an application has to be made for sarai licence requires a no objection certificate

to be obtained from the owner of the property, it was not necessary for the seventh respondent to obtain any permission from any other since the

seventh respondent had purchased the property in or about the year 1993. The seventh respondent relies on a document executed in 1993 by the

alleged predecessor-in-interest of the appellants herein acknowledging receipt of the full consideration for sale of the entirety of the property.

It appears that a civil suit has been filed by the appellants for the eviction of the seventh respondent from the property in question. The seventh

respondent says that he has filed written statement and a point has been taken in the written statement that the suit is utterly unmeritorious as the

relevant premises had been sold to the seventh respondent herein by the predecessor-in- interest of the appellants.

The State claims that the application for sarai licence was found to be in order and was duly processed. The State says that it had no inkling of any

dispute between the seventh respondent and the appellants herein as to the ownership of the property and accepted the application on its face value

and processed the same.

Since a civil suit is pending between the appellants and the private respondent, the rights of such parties have to be adjudicated in such proceedings.

The rival claims of the private parties pertaining to the relevant property will, per force fall for determination in the civil suit. Accordingly, the order

impugned is not interfered with on the ground that such disputed questions of fact as to the ownership of the property in question could not have been

adjudicated upon in summary proceedings. In the event the appellants succeed in their suit or any declaration is issued by any appropriate Civil Court

holding the appellants as the owners of the property, it will be open to the appellants to seek revocation of the licence granted by the State to the

private respondent herein. As to the running of a guest house at the Howrah property, interim orders may be sought in the civil suit. Nothing in the

order impugned herein or in the present order may be used to imply anything prejudicial against the appellants herein or the private respondents herein

having been pronounced whether by the Writ Court or by the Appellate Court.

MAT 1556 of 2017 along with CAN 9335 of 2017 are disposed of.

There will be no order as to costs.