

(2013) 01 CAL CK 0048

In the Calcutta High Court

Case No : A.P.O. No. 123 of 2012; A.P.O.T. No. 64 of 2012; G.A. No. 3393 of 2011; W.P. No. 221 of 2011

Himalaya Optico

APPELLANT

Vs

Kolkata Municipal Corporation

RESPONDENT

Date of Decision : 16-01-2013

Acts Referred:

Calcutta Municipal Corporation Act, 1980 — Section 411

Citation : (2013) 1 CHN 554

Hon'ble Judges : Arun Mishra, C.J.; Joymalya Bagchi, J

Bench : Division Bench

Advocate : Kishore Datta and Usha Doshi, for the Appellant; Pranab Datta and Billwadal Bhattacharyya and Barin Banerjee and Sima Chakraborty for KMC, for the Respondent

Final Decision : Dismissed

Judgement

1. Heard Mr. Kishore Datta appearing on behalf of the appellants and Mr. Pranab Datta, learned Senior Advocate for the respondent-authorities. The appellants/petitioners filed the writ application before the Single Judge questioning a notice issued by the respondent authorities regarding demolition of part of the premises which was not occupied by the petitioner at 300, B.B. Ganguly Street, Kolkata. The petitioners made a prayer that notice is illegal. The writ petition has been dismissed on merits by the Single Judge vide order dated 11th April, 2011. It is observed by the Single Judge that building has already been acquired under the Land Acquisition Act for the purpose of housing Police Department. The petitioner is not being dispossessed from the premises and the first floor which has become dilapidated was required to be dismantled pursuant to the notice issued for demolition. The petitioners apprehended that if the demolition order is allowed to carry on there will be seepage of water and the part of the premises which is in its possession will become uninhabitable.

2. After the disposal of the writ petition, a review application has been preferred

being G.A. No. 3393 of 2011 which has been dismissed by the Single Judge on 11th January 2012 holding that the review application is hopelessly barred by delay and there is no explanation forthcoming for the delay in filing the application seeking review. Even otherwise there is no ground for review of the order in question.

3. As against the order rejecting the review application, this appeal has been preferred. Objection has been raised by Sri Pranab Datta, learned Senior counsel appearing for the respondents saying that the intra-Court appeal cannot be said to be maintainable as against the order passed rejecting the review application. Petitioners/appellants have not questioned the main order dismissing the writ application on 11th April, 2011 passed in W.P. No. 221 of 2011.

4. Sri Kishore Datta, learned counsel appearing on behalf of the appellants has submitted that the appeal is maintainable as against such an order and in the interest of justice review application ought to have been allowed. Scope of review application has been widened in several decisions. The review application ought to have been entertained, delay ought to have been condoned and the tenantable repairs ought to have been permitted to be carried out by the appellants.

5. Learned Senior counsel appearing for the State respondents while elaborating his argument has submitted that this Court cannot go into the merits of the case as the order dismissing the writ application on merits has not been questioned in the appeal. However, it is stated that the State respondents do not intend to make the premises uninhabitable. It is also submitted that the building is otherwise in a dilapidated condition. Thus, no case for interference is made out. The petitioners may be at liberty to approach the Rent Controller under the provisions of West Bengal Premises Tenancy Act, 1997.

6. After hearing the learned counsel for the parties, we are of the considered opinion that the appeal as against the order rejecting the review petition is not maintainable. Apart from that, even if we go through the merits of the case, the petition has been relegated with reference to repairs for adjudication by the Rent Controller as the building is stated to be in dilapidated condition. All facts cannot be examined here. What is meant by tenantable repairs, it is open to the petitioners to approach the Rent Controller in the matter. However, the petitioners are not going to be dispossessed under the order of the first Court. It is categorically observed by the Single Judge that it is not even the case of the appellants that the portion in their possession is going to be demolished. Since a statement has been made on behalf of the official respondents that under the guise of repairs they are not going to dispossess and/or in any way change the nature of the premises to make it further uninhabitable and since all the aforesaid statements and/or observations have been considered by the learned Single Judge, we find that the review application has been rightly rejected by the Single Judge. We find no merit in the appeal. If the petitioners are advised, they may approach the Rent Controller for obtaining appropriate order as to what kind

of repair they want to carry out and whether that would be within the purview of tenantable repairs.

7. It has been submitted by Sri Kishore Datta, learned counsel appearing for the appellants that it is the right of the tenants to effect repairs and make the premises secured u/s 411 of the Kolkata Municipal Corporation Act. It is open to the petitioners to take such plea before the Rent Controller.

8. The appeal is accordingly dismissed. Photostat certified copy of this order be made available to the parties upon compliance of usual formalities.