
(2008) 06 CAL CK 0028
In the Calcutta High Court
Case No : C.O. No. 1008 of 2000

Mrs. Lakshmi Devi Singh

APPELLANT

Vs

The Municipal Commissioner and Others

RESPONDENT

Date of Decision : 26-06-2008

Acts Referred:

Calcutta Municipal Corporation Act, 1980 — Section 400, 401

Citation : (2008) 06 CAL CK 0028

Hon'ble Judges : Prasenjit Mandal, J

Bench : Single Bench

Advocate : Kedarnath Sen and Probodh Ranjan Das, for the Appellant; Swapan Kumar Debnath, for the Respondent

Final Decision : Dismissed

Judgement

Prasenjit Mandal, J.—This application is directed against the judgment and order dated 19.02.2000 passed by the Municipal Building Tribunal, the Kolkata Municipal Corporation in B.T. Appeal No. 350 of 1987-88 whereby the learned Tribunal has dismissed the appeal preferred by the petitioner.

2. The petitioner preferred the appeal against the order of demolition passed by the Special Officer (Building) of the Kolkata Municipal Corporation in Demolition Case No. 24-D of 1986-87 in respect of premises No. 167, Netaji Subhas Road within the jurisdiction of the Kolkata Municipal Corporation. Her contention is that she is the tenant in respect of 4 rooms at the top floor of the said premises and order of demolition was passed in respect of her tenanted premises without service of any notice. So the order of demolition was not proper. She has prayed for setting aside the order of demolition of her tenanted portion of the premises.

3. After hearing the submissions of the learned Advocate of both the sides and on perusal of the record, I find that the petitioner has contended that she is a tenant in respect of 4 rooms of the top floor of the premises No. 167, Netaji Subhas Road within the jurisdiction of the Kolkata Municipal Corporation under

Raja Katra Private Limited who granted rent receipts, (Annexure A series). The contention of the opposite parties is that such receipts were granted after the necessary steps for demolition of the building and so these are manufactured and afterthought steps. It is the contention of the petitioner also that though she is a tenant in respect of the premises in demolition case, she was not served at all any notice upon her and thus the natural justice has been violated.

4. As regards annexures A, I find that the petitioner has produced three rent receipts which relate to the period after start of the demolition proceedings. Moreover the receipts lay down tenancy in respect of one room only. It is difficult to connect the receipts with the rooms under the demolition case. The municipal authority has raised the contention that it got information about unauthorised construction and then notice was served u/s 401 of the Kolkata Municipal Corporation Act, 1980 upon the person who was making unauthorised construction and he is none but the son of the petitioner. Notice was served upon him and such notice was received by one S. Seraswat on his behalf.

5. In spite of notice, such unauthorised person namely Sri Ramesh Singh, was continuing with the unauthorised construction and so guard was posted at the premises in case for three days and thereafter upon an undertaking given by S. Seraswat the guard was removed. In spite of that construction was going on. Inspection of the premises was done and it was found that 4 rooms had been constructed with new materials. R.C.C. roof structures with R.C.C. columns with brick walls having a flight of stair from 4th to 5th floor level in the 5th storey was being made with new materials. Plastering was not complete at that time. The inspection report had shown that new construction was going on.

6. Accordingly, a notice u/s 401 of the said Act was served upon the person who was making construction and one S. Seraswat had received the notice on behalf of Ramesh Singh and he promised not to make further construction. If the rooms were yet then to be completed, question of tenancy does not arise. The contention of the petitioner that she is a tenant in respect of 4 rooms under demolition case does not find support from the materials on record. Above all, a tenant cannot make any construction unless she is authorised by the landlord. The petitioner has failed to show any document that she was authorised to make the construction. As per inspection report in spite of giving an undertaking by S. Seraswat on behalf of Ramesh Singh, the unauthorised construction was carried on. The petitioner was not entitled to get any notice u/s 401 of the said Act. The notice u/s 400 of the said Act was duly served upon the person who was making unauthorised construction namely Ramesh Singh, son of the petitioner. The question of serving notice upon the petitioner u/s 400 of the said Act does not arise because it is not her case that she was not making unauthorised construction. Affidavits had been sworn by the petitioner and her son denying service of notice under Sections 400 and 401 of the said Act. Such type of affidavits can be sworn at any time. In consideration of the conduct of the person who is making unauthorised construction, that is the son of the petitioner, I hold

that it is difficult to believe in the affidavits. The petitioner does not seem to have taken any step against the landlord. Even the landlord did not come forward to resist demolition. The petitioner who is claiming tenancy, has filed the appeal against demolition. The demolition case is not contested by either the owner of the premises or the petitioner.

7. In the circumstances, the learned Building Tribunal has rightly observed that this appeal is an afterthought in order to get rid of the demolition case.

8. In that view of the matter, I hold that the petition is devoid of merits. It is therefore dismissed.

9. Considering the circumstances, there will be no order as to costs.

10. Interim order, if any, is hereby vacated.

11. Urgent xerox certified copy of this order, if applied for, be supplied to the learned Advocates for the parties on their usual undertaking.