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SLP(C)No. 8817 OF 2003  
ITEM No.201

Court No. 1

SECTION XVI  
A/N MATTER

S U P R E M E C O U R T O F I N D I A  
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (Civil) No.8817/2003

(From the judgement and order dated 28/01/2003 in GA 263/03  
in A.P.O.T. 33/03 in WP.No.2635/98 of The HIGH COURT OF CALCUTTA)

DEBASHIS ROY & ANR.

Petitioner (s)

VERSUS

CALCUTTA MUNICIPAL CORPORATION & ORS.

Respondent (s)

( With Appln(s). for directions )(With prayer for interim relief)  
(with office report)( For Final Disposal )

Date : 25/02/2005 This Petition was called on for hearing today.

CORAM :

HON'BLE THE CHIEF JUSTICE  
HON'BLE MR. JUSTICE H.K. SEMA  
HON'BLE MR. JUSTICE B.N. SRIKRISHNA

For Petitioner (s)

Mr.Sourav Agrawal,Adv.,

Mr.Sriharsha Rao,Adv.,

Ms.Ruby Singh Ahuja,Adv.

For Respondent (s)

Mr.Tapash Ray,Sr.Adv.,

Mr. Satish Vig,Adv.

Mr.P.N. Mishra,Sr.Adv.,

Mr.Suchit Mohanty,Adv.,

Mr.Abhishth Kumar,Adv.

Mr.Bikas R. Bhattachrya,Sr.Adv.,

Mr.Rana Mukherjee,Adv.,

Mr.Siddharth Gautam,Adv.,

Mr. Goodwill Indeevar,Adv.

Mr.Pijush K.Roy,Adv.,

Mr.G.Ramakrishna Prasad,Adv.

UPON hearing counsel the Court made the following

O R D E R

Leave granted.

The appeal is allowed. Impugned orders passed by the learned single Judge as well as by the Division Bench of the High Court are set aside. The case is remanded to High Court for fresh decision in accordance with law in the light of the observations made in the order. The High Court is requested to dispose of the writ petition within a period of six months. Parties through their counsel are directed to appear before the High Court on 14.3.2005.

(Vijay Kumar Sharma)  
AR cum PS to Hon.Judge

(Radha R.Bhatia)  
Court Master

Signed order is placed on the file.

IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.1486/2005  
(Arising out of SLP © No.8817/2003)

Debashis Roy & Anr...Appellants

Versus

Calcutta Municipal Corporation & Ors.                      ..Respondents

O R D E R

Leave granted.

There is a property known as Vivek Vihar, Premises No.13/3, Ballygunge Circular Road, Calcutta. The property is situated in a prime locality of the cosmopolitan city of Calcutta. The owner-cum-builder constructed the multi-storeyed building which, as we are told, consists of 7 storeys and 27 flats. When the building plans were initially sanctioned by the Calcutta Municipal Corporation, a substantial area on the ground floor was shown as parking space. We are told during the course of the hearing that most of the flat owners have purchased and paid for individual parking space. Nevertheless, the disputed portion of the ground floor was shown in the plan as parking space.

In the year 1994, the building owner is alleged to have entered into an agreement for sale of little less than 2000 sq.ft. area of the ground floor in favour of respondent No.6-M/s.Maitry Resources Pvt.Ltd. It is also not in dispute that till this date there is no deed of sale executed by the owner in favour of respondent No.6. On 19.2.2001, respondent No.6 moved an application to Calcutta Municipal Corporation seeking change of use under Section 416 of the Calcutta Municipal Corporation Act, 1980 (hereinafter referred to as 'the Act'). The Corporation moved fast. The property was inspected. A demand for charges for converting the change of use was raised on 7.3.2001 and complied with on the same date by depositing Rs .92,100/-. The revised plan was ready for release on 13/14.3.2001 and was actually released on 14.3.2001.

In the year 1998, 19 of the flat owners filed writ petition in the High Court seeking restraint on change of use of the open space, designated as parking space, and sought for intervention of the High Court. The writ petition was entertained by the High Court and an interim order of stay was also granted. The respondent No.6 was impleaded as a party in the writ petition and the interim orders were made binding on it also. After hearing all the parties before it, a learned single Judge of Calcutta High Court disposed of the writ petition by dismissing the same on 3.12.2002. The principal reason which has prevailed with the single Judge is the availability of alternate remedy to the writ petitioners of approaching the Municipal Corporation and/or filing a civil suit. The aggrieved writ petitioners filed intra court appeal before the Division Bench. On 28.1.2003, the Division Bench dismissed the appeal summarily by an unreasoned order forming an opinion that no case was made out for interference with the order of the learned single Judge. This is an appeal by special leave impugning the orders of the learned single Judge and that of the Division Bench.

Additional material and documents were made available for the perusal of this Court.

Having heard the learned counsel for the parties at length, we are satisfied that the impugned orders of the High Court cannot be sustained. The issues arising for decision in the petition call for a full-fledged hearing on merits.

There are several issues arising for consideration. Some of them are: whether what was shown as an open space in a multi-storeyed building complex could at all be permitted to be changed to another use? Whether an application under Section 416 of the Act could at all be maintained by a person in whose favour there was only an agreement for sale and who had not acquired the title? Whether such an application could be heard and disposed of in the manner in which it has been done by the Municipal Corporation and without affording an opportunity of hearing to the flat buyers whose interests were apparently adversely affected? Whether a building, essentially residential in character, could be permitted under the local law to be used for commercial purposes?

We feel that the writ petition filed in the High Court was not confined to raising dispute between private parties. There was essentially an element of public interest involved as serious questions alleging violations of building laws and the town planning were raised. Whether the power under Section 416 was available to be exercised and if so, whether it was rightly exercised by the local authority, was another question. They called for a serious consideration on the part of the High Court. If at all a case of illegal change of use and violation of building laws or town planning was made out, then it was a clear case of calling for an order of demolition of unauthorised construction. We may also place on record that the learned counsel for the petitioners was at pains in submitting that the change of use and the constructions were done during the pendency of the writ petition and also in defiance of the interim orders passed by the High Court which contention has not received the consideration of the High Court.

The impugned orders passed by the learned single Judge as well as by the Division Bench of the High Court are set aside. The case is remanded to the High Court for hearing afresh and decision in accordance with law consistently with the observations made hereinabove. As it is pointed out that commercial construction on the parking space has already come up and commercial activities are being carried thereon which causes serious inconvenience and discomfort to the flat owners, we request the High Court to give priority to the hearing of this petition and dispose of the same as expeditiously as it can, preferably within a period of six months from the date of this order being brought to the notice of the High Court.

Parties through their respective counsel are directed to appear before the High Court on 14.3.2005.

The appeal stands allowed accordingly.

.....CJI  
(R.C. Lahoti)

.....J  
(H.K. Sema)

.....J  
(B.N. Srikrishna)

New Delhi,  
February 25, 2005.