IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 2539 OF 2016 (Arising out of SLP(C) No. 10378/2013)

OMKAR PRASAD .. APPELLANT(S)

1

VERSUS

DEVANAND CHOUDHURY & ORS. .. RESPONDENT(S)

ORDER

1. Leave granted.

tition

2. Respondent No.1 had filed Writ Pe

No. 23170 (W) of 2012 in the High Co

urt of

Calcutta, wherein it was alleged that the

appellant-herein had constructed a building on
the land which was declared surplus and vested
in the State and therefore such a construction

was illegal and should be demolished.

The

appellant was also impleaded as one E the

respondents in the writ petition. Notices w

ere

Signature Not Verified

issued which were served on the appella

nt.
RANI BHARDWAJ
Date: 2016.03.08

However, the appellant did not appear.

After hearing the matter, the High Court

has passed the impugned order dated 16.01.2013

Digitally signed by USHA

17:12:08 IST Reason:

accepting the contention of respondent No.1 that

the land was surplus and therefore vested

in

5.

the State and thus the appellant could not have raised any construction thereupon.

This order is under challenge appeal. The case set up by the appellant is that he had purchased the land in question and it is further argued that the land cannot be treated as surplus or vested in the State. This is disputed by the respondent(s). Before us the appellant has given sufficient reasons why he could not appear before the High and therefore could not present his version. In these circumstances, it would be appropriate to remit the case back to the High Court for fresh decision on merits after hearing all the parties. We, thus, set aside the impugned order passed by the High Court and remit the case back to the High Court.

- The appeal is accordingly allowed.
- to file The appellant shall be permitted counter affidavit in the writ petition within four weeks from today. Rejoinder thereto may be filed within four weeks' thereafter.
- 7. We may note that the appellant shall not create third party rights in the property in question. We request the High Court to make endeavor to dispose of the matter expeditiously.

			J.
		[A.K.	SIKRI]
			J.
]	R.K.	AGRAWA	AL]

NEW DELHI,
MARCH 04, 2
ITEM NO.46 MARCH 04, 2016.

COURT NO.12

SECTION XVI

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S U P R E M E C O U R T O F I N D I A RECORD OF PROCEEDINGS
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Petition(s) for Special Leave to Appeal (C) No(s)

No(s). 10378/2013

(Arising out of impugned final judgment and order dated 16/01/2013 in WP No. $23170\,(\text{W})/12$ passed by the High Court Of Calcutta)

OMKAR PRASAD Petitioner(s)

VERSUS

DEVANAND CHOUDHURY & ORS. Respondent(s) (With appln. (s) for permission to file additional documents and interim relief and office report)(FOR FINAL DISPOSAL)

Date 04/03/2016 This petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE A.K. SIKRI HON'BLE MR. JUSTICE R.K. AGRAWAL

For Petitioner(s) Mr. Soumya Chakraborty, Adv.

Mr. Debashis Sinha, Adv. Mr. Danish Zubair Khan, Adv.

For Respondent(s) Mr. Sankar Ch. Ghosh, Adv.

For State Mr. Mrinal Kanti Mandal, Adv.

Mr. Parijat Sinha, Adv.

rr.1 Mr. Aditya Dhar, Adv.

Mr. Ghalib Kabir, Adv. Dr. Kailash Chand, Adv.

Mr. L.C. Agrawala, Adv.

UPON hearing the counsel the Court made the following O R D E R $\,$

Leave granted.

The appeal is allowed in terms of the signed order.

Consequently, all the applications are disposed of.

[Signed order is placed on the file]