

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)

VERSUS

DEVANAND CHOUDHURY & ORS. .. RESPONDENT(S)

O R D E R

1. Leave granted.

2. Respondent No.1 had filed Writ Petition

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

Calcutta, wherein it was alleged that

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 of

respondents in the writ petition. Notices were

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issued which were served on the appella

nt.

RANI BHARDWAJ

Date: 2016.03.08

17:12:08 IST

Reason:

However, the appellant did not appear.

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3. After hearing the matter, the High Court

has passed the impugned order dated 16.01.2013

accepting the contention of respondent No.1 that

the land was surplus and therefore vested in

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

4. This order is under challenge in this 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 Court 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.

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5. The appeal is accordingly allowed.
6. The appellant shall be permitted to file 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. AGRAWAL]

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

Mr. L.C. Agrawala, Adv.

Leave granted.

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[ Signed order is placed on the file ]
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