

Sn 14.9.2020
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W.P.A.6112 of 2020
C.A.N. 1 of 2020
(Old C.A.N.4367 of 2020)
Through Video Conference

TARUN KUMAR MONDAL & ORS. VS. STATE
OF WEST BENGAL & ORS.

Mr. Rudranil De
Ms. Madhurima Sarkar
 ..for the petitioners
Mr. Tapas Kumar Adhikari
Mr. Somraj Dhar
 ..for the State
Ms. Koyeli Bhattacharya
 ..for the respdts.5-10

In view of the urgency, the matter is taken up virtually. The C.A.N.1/2020 (Old C.A.N.4367 of 2020 is disposed of.

Despite service none appears on behalf of the Howrah Municipal Corporation . Let the affidavit of service filed in Court today be taken on record.

The petitioners claim that in violation of an order of status quo granted in Misc. Appeal No.240 of 2018 arising out of Title Suit No.1191 of 2018, the Howrah Municipal Corporation has granted sanction in favour of the respondent nos.5 to 10 for building on an adjacent plot of land. According to the petitioners, the Howrah Municipal Corporation has acted in a mala fide manner in violating the order of the Civil Court.

The petitioners pray that the Municipal

authorities be directed to demolish the construction which had taken place in violation of the order of status quo. The petitioners also filed a representation dated July 8, 2020 before the Commissioner of Howrah Municipal Corporation and other officers therein. The petitioners have not only alleged unauthorized illegal construction in violation of the said interim order passed in the Title Appeal and have alleged misrepresentation and fraud on the part of the respondent nos.5 to 10.

Ms. Bhattacharya, learned Advocate appearing on behalf of the respondent nos.5 to 10 submits that pursuant to the allegations made by the petitioners a stop work notice was issued by the Howrah Municipal Corporation and thereafter a demolition order was also passed. Subsequently, the said respondents made an application for regularization and the Corporation directed the said respondents to submit an application with the 'As Made' plan regarding the deviation.

The grievance of the petitioner are that despite unauthorized and illegal construction, the corporation in a mala fide manner are colluding with the petitioners and not taking any steps under the law. The petitioners are granted liberty to approach the Corporation under Rule 15A of the Building Rules and pray for cancellation of sanctioned plan, which according to the petitioners

have been obtained by his representation and fraud in violation of the order of status quo.

It is made clear that in the pending proceeding before the Corporation with regard to the deviation and regularization, the petitioners should be heard. The application of the petitioners for cancellation of sanction will also be heard upon notice to the respondent Nos.5 to 10.

The petitioners shall file the application within two weeks from date. The concerned authority of the Corporation shall hear the petitioners, the respondent nos.5 to 10 and all other interested parties and pass a reasoned order on the basis of the submissions and evidence produced along with documents relating to the suits and appeal filed by the parties.

It is submitted by the learned Advocate for the State respondents that under the law the question of regularization of deviation does not arise.

However, the entire matter is now pending before the Corporation. The Commissioner of Howrah Municipal Corporation will decide the entire dispute with regard to the alleged illegal construction in violation of the order of status quo alleged deviation and also take into consideration the decisions of this Court and the Apex Court on the points of regularization and illegal construction. If the authority is satisfied that there has

been unauthorized and illegal construction the authority will proceed according to law.

Upon hearing all the parties the reasoned order should be passed and communicated to all concerned.

The entire exercise should be completed within a period of ten (10) weeks from the date of receipt of the petitioners' application.

It is also recorded as per the submissions of the respondent nos.5 to 10, that the work has been stopped and is not being carried on.

This writ petition is disposed of.

There will, however, be no order as to costs.

Parties are directed to act on the learned Advocate's communication.

(Shampa Sarkar, J.)

