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M.A.T. 517 of 2020
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CAN 1 of 2020 (Old No. CAN 5378 of 2020)
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CAN 2 of 2020 (Old No. CAN 5380 of 2020)

(Alok Prosad Coomar & Ors. vs. Howrah Municipal Corporation & Ors.)

Mr. S. Banerjee
Mr. Kunal Ganguly
.... For the Appellant

Mr. Biswabrata Nandy
.... For the Respondent
Mr. Dibyendra Narayan Roy
.... For the Respondent

The appeal is taken up for hearing through video conferencing.

Accordingly, the application being CAN 2 of 2020 (CAN 5380 of 2020) is disposed of.

The matter was adjourned yesterday since the Howrah Municipal Corporation was not represented.

Even assuming that the person who had issued the stop notice has been delegated with the power to issue such notice by the Commissioner, but the said delegatee cannot disregard the procedure prescribed under Section 177 of the Howrah Municipal Corporation Act. The said Section reads as follows:

“Section 177 Order of demolition or stoppage of buildings and works.

- (1) Where the erection of any building or the execution of any work in pursuance thereof has been commenced, or is being carried on, or has been completed without or contrary to the sanction or in contravention of any of the provisions of this Act or the rules and the regulations made thereunder, the Commissioner may in addition to any other action that may be taken under this Act, make an order directing that such erection or work shall be stopped or demolished or such addition or alteration thereto be made as the Commissioner considers necessary, by the person at whose instance the erection or the work has been commenced, or is being carried on, or has been completed;

Provided that no order under this provision shall be made unless such person has been given a reasonable opportunity of being heard in accordance with such procedure as may be prescribed.

- (2) The Commissioner may make an order under sub-section (1), notwithstanding the fact that the assessment of such building has been made for the levy of the Words subs. for the words “ consolidated rate” by W.B. Act 17 of 1995 [property tax] on lands and buildings.
- (3) Any person aggrieved by an order of the Commissioner made under sub-section (1) may, within thirty days from the date of the order, prefer an appeal against the order to the Municipal Building Tribunal appointed under this Chapter.
- (4) No Court shall have jurisdiction in any matter for which provision is made under this Chapter for appeal to the Municipal Building Tribunal.
- (5) If a person fails to comply with a conclusive order of the Commissioner or the Tribunal, as the case may be, under this section, the Commissioner may himself cause the order to be carried out and recover the expenses thereof from such person as an arrear of tax under this Act.
- (6) Notwithstanding any contained in this Chapter if the Mayor-in-Council is of the opinion that immediate

action is called for in relation to a building or any work being carried on in contravention of the provisions of this Chapter, it may, for reasons to be recorded in writing, cause such building or work to be demolished forthwith.”

Admittedly in the instant case the order of stop notice was passed without giving an opportunity of hearing to the appellants. The Corporation has also failed to demonstrate that there was any immediate need to issue the stop notice as a result whereof the said provision was bypassed. Even today the Corporation is unable to produce any records showing that decision has been taken with regard to such unauthorised construction. In the absence of any such decision prior to issuance of such stop notice under Section 177 of the Howrah Municipal Corporation Act coupled with the fact that the matter is pending for almost 6 months, we are inclined to interfere with the order passed by the learned single Judge. The impugned order is set aside.

However, this order shall not prevent the Howrah Municipal Corporation to act in accordance with law. We make it clear that any construction made in the garb of repairing or otherwise if it is found to be unauthorised it should be demolished. We further make it clear that any construction made by the appellants shall not create any equity in their

favour, in the event such construction is found to be unauthorised or illegal . We however, make it clear that the construction shall be in accordance with the sanction plan and no deviation should be permitted.

The appeal being MAT 517 of 2020 is allowed.

Consequently, the application being CAN 1 of 2020 (CAN 5378 of 2020) is disposed of.

(Soumen Sen, J.)

(Saugata Bhattacharyya, J.)