

FMA 915 of 2020
with
IA NO. CAN 1 of 2020

Mr. Amal Baran Chatterjee
Mr. Parvej Anam

.....For the appellant

Mr. Prosenjit Mukherjee
Mr. A. K. Das

.....For the respondent no. 1

Mr. Madhusudan Sur, Ld. Addl. P.P.
Mr. Dipankar Paramanick

.....For the State

Mr. Amal Kumar Banerjee

.....For the Rampurhat Municipality

FMA 915 of 2020

with

IA NO. CAN 1 of 2020

(Sairani Bibi @ Saibani Bibi & Ors. Vs.
The State of West Bengal & Ors.)

CRM 716 of 2020 was disposed of on 23rd March, 2021 and is wrongly appearing in the list. The department shall record disposal of CRM 716 of 2020 on 23rd March, 2021 and the matter shall not be shown as pending.

The Hon'ble the Chief Justice has assigned FMA 915 of 2020 after necessary correction was carried out in the earlier assignment order.

However, today instead of "FMA 915 of 2020" it has been wrongly typed in the Cause List as "MAT 915 of 2020". The order that we propose to pass in disposing of FMA 915 of 2020 should be taken note of by the Department concerned after carrying out necessary correction in the Cause List by publishing a

Supplementary Cause List today itself with the corrected number as “FMA 915 of 2020”.

The appeal is arising out of an order passed by the learned single Judge in a writ petition filed by one Sajal Sk. alleging that the present appellant has made unauthorized and illegal construction, but the Rampurhat Municipality inspite of knowledge thereof, has not taken any step to demolish such unauthorized construction.

The learned single Judge upon consideration of the materials on record and being *prima facie* satisfied that the constructions may be unauthorized and beyond the sanctioned plan restrained the appellant from carrying on any construction and/or further construction at the premises in question. The municipality was given liberty to execute the said order with police help, if required.

In the appeal, it is contended on behalf of the appellant that the matter was heard *ex parte* without giving any opportunity to the appellant to controvert the allegations made by the writ petitioner. It is submitted that the writ petitioner is not the co-owner of the said premises in question and even not residing adjacent to the premises.

It is further argued that the said order was passed on the erroneous view without considering the provisions of Chapter XV of the West Bengal Municipal Act, 1993.

The case of the appellants in the appeal in short is that the alleged unauthorized construction is in the nature of repairing work for which no sanctioned plan is required.

In the appeal, Sairani Bibi filed an affidavit in which in paragraph 4 she has briefly indicated the history of the property in question and in sub-paragraph (d) of the said paragraph it is stated that the Chairman of the Rampurhat Municipality issued certificate that Sairani Bibi is residing at the said premises since last 40 years and no new construction has been raised and only repairing work was being carried out.

This certificate has been alleged to be false and based on such allegation, the Chairman, Rampurhat Municipality has lodged an F.I.R. and the police authorities have filed a charge-sheet before the learned Additional Chief Judicial Magistrate, Rampurhat.

Learned counsel for the Rampurhat Municipality has produced before us an order dated 6th November, 2019 passed by the Vice-chairman, Rampurhat Municipality in which it is recorded that the appellant could not produce any deed or Records of Rights in the name of Sk. Gul Mohammad nor they could produce any sanctioned plan of their building. It is also contended that the appellant during the time of hearing has produced four documents, namely, Voter List, Tax Receipt, Electricity Bill and Still Photo (4 copies).

In the absence of the aforesaid, *prima facie*, it appears that the said construction is unauthorized. The order of the Vice-chairman, Rampurhat Municipality dated 6th November, 2019 is also not under challenge.

It appears from the photographs made available during hearing that it is a construction of a new building and not repairing. We have been informed that the construction is on vested land. The photographs produced in proof of a new construction on the land is kept with the record.

In view of the fact that during hearing the appellant could not produce any document of ownership nor any sanctioned plan and the nature of construction does not appear to be a repairing work, we dismiss the appeal and affirm the order of the learned single Judge.

Mr. Amal Baran Chatterjee, learned senior counsel appearing on behalf of the appellants has submitted that there was an existing brick-wall over which admittedly certain constructions have been made, which, according to the appellants, are in the nature of repair. It is submitted that the tin-shed of the building was attempted to be replaced with a concrete construction so as to give a better living condition to the appellants. Our attention is also drawn to the fact that an application is pending before the LR Department for correction of the Record of Rights and in connection thereof, a proceeding is pending before the West Bengal Land Reforms and Tenancy Tribunal.

At this stage, we are not deciding the legality and veracity of the order passed by the Vice-chairman, Rampurhat Municipality. The said authority on 6th November, 2019 passed an order in which an observation has been made that in absence of “*any considerable documents for providing their ownership*” which shall be read and considered as inability to produce reliable documents in proof of ownership and that the construction is not a repairing work and it is construction of a new building the claim of the writ petitioners was refuted.

The Vice-chairman, Rampurhat Municipality did not pass any final order of demolition in deference to the wishes of the co-ordinate Bench contained in the order dated 6th November, 2019.

In view of the fact we find no reason to interfere with the order under appeal. We have not considered the order dated 6th November, 2019 on merits passed by the Vice-chairman, Rampurhat Municipality. We take into consideration such order and other materials for not interfering with the order passed by the learned single Judge and not for any other purpose. Moreover, no final order of demolition has been passed by the said authority.

In the event the municipality proposes to pass any order of demolition, that should be done after giving an opportunity of hearing to the appellants and on consideration of all the relevant documents that may be

relied upon by the appellants for the proposed construction including the proceedings and orders, that might have been passed by the West Bengal Land Reforms & Tenancy Tribunal by a reasoned order.

In the event any adverse order is passed against the appellants by the Rampurhat Municipality, the same shall not be given effect to for a period of 4 (four) weeks from the date of communication of the said order.

Since the appeal is dismissed, the connected application is also dismissed.

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

Urgent photostat certified copy of this order, if applied for, be given to the parties on the usual undertakings.

(Saugata Bhattacharyya, J.)

(Soumen Sen, J.)