

OD-1, 2 & 3

ORDER SHEET

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
ORIGINAL SIDE

IA No. GA/1/2021
In
APOT/203/2021

MAHARAJA PRODYUT KUMAR DEB BARMAN
-VS-
SHIROMONI FLAT OWNERS ASSOCIATION

&
APOT/204/2021
With
WPO/45/2018

MAHARAJA PRODYUT KUMAR DEB
-VS-
SHIROMONI FLAT OWNERS ASSOCIATION AND ORS

&
IA NO. GA/1/2021
With
WPO/45/2018
In
APOT/206/2021

MAHARAJA PRODYUT KUMAR DEB
-VS-
SHIROMONI FLAT OWNERS ASSOCIATION

BEFORE:
The Hon'ble JUSTICE ARIJIT BANERJEE

The Hon'ble JUSTICE KAUSIK CHANDA

Date : December 13, 2021.

[Via video conference]

Appearance
Mr. Ratnanko Banerji, Sr. Adv.
Mr. Krishna Raj Thaker, Adv.
Mr. Aditya Kanodia, Adv.
Mr. Indradeep Basu, Adv.
...for the Appellant

Mr. Sakya Sen, Adv.
Mrs. Reshmi Ghosh, Adv.
Mr. Atish Ghosh, Adv.
...for the respondent nos. 1 to 16/ writ petitioners

Mr. Utpal Bose, Sr. Adv.
Mr. Reetobroto Mitra, Adv.
Ms. Labanyasree Sinha, Adv.
...for the respondent no.25

Mr. Probal Kr. Mukherjee, Sr. Adv.
Mr. Subrata Goswami, Adv.
...for the respondent nos. 26 & 27

Mr. Achintya Kumar Banerjee, Adv.
Mr. Gopal Chandra Das, Adv.
...for KMC

The Court : By consent of the parties, the appeal and the stay application are taken up together for hearing.

Affidavit-of-service filed in Court today is taken on record.

The present litigation pertains to a construction that is being made on premises situate at 59, Ballygunge Circular Road, 700019, which is popularly known as 'Tripura House'. The appellant in these three appeals is the owner of the land in question.

The respondent nos.1 to 16 herein filed a writ petition challenging a plan sanctioned by the Kolkata Municipal Corporation (in short 'KMC') for construction of a multistoried building on the land in question. In the writ petition an interim order was prayed for stopping the construction. By an order dated April 23, 2018, a learned Single Judge declined to stay the construction, gave direction for exchange of affidavits and recorded that the construction shall abide by the result of the writ petition.

Thereafter, from time to time the writ petition was heard. On August 23, 2021, an order was passed by the learned Single Judge staying further construction on the land in question. The learned Judge recorded that

adjournment was being sought for by KMC and respondent nos.9 and 10. Because of the pressure of work, it would not be possible for the learned Judge to hear out the writ petition before the puja vacation. Further construction was stayed till November 30, 2021.

Being aggrieved, the developer came up in appeal against the aforesaid stay order. By an order dated November 29, 2021, this Bench disposed of the appeal, without interfering, in view of the fact that the interim order was to continue only till the next day i.e. November 30, 2021 and the matter was being heard by the learned Single Judge. This Bench did not go into the merits of the interim order of stay passed on August 23, 2021 by the learned Judge.

On November 29, 2021 itself, the learned Judge passed an order extending the interim order of stay till December 24, 2021.

The present appellant applied before the learned Single Judge for vacating of the interim order of stay. It is the contention of the appellant that by an order dated December 3, 2021, the appellant's prayer for vacating the order of stay of further construction was refused. The appellant has filed an appeal against the order dated December 3, 2021. The appellant has also filed appeals against the orders dated August 23, 2021 and November 29, 2021.

Appearing for the appellant in all the three appeals, Mr. Ratnanko Banerji, learned senior counsel submitted that the order dated August 23, 2021 could not have been passed as the same would be hit by the principles of *res judicata*. A learned Single Judge at the time of admitting the writ petition, declined to pass an interim order of stay of construction. Hence, unless there was change of circumstances, at a subsequent stage in the same proceedings, no such interim order could be passed. In this connection Mr. Banerji relied

on a decision of the Supreme Court in the case of *Barkat Ali And Anr. -vs.- Badrinarain (Dead) by LRS.* reported at (2008) 4 Supreme Court Cases 615 wherein at paragraph 13 of the reported judgment, the Supreme Court held that “the principles of *res judicata* not only apply in respect of separate proceedings but the general principles also apply at the subsequent stage of the same proceedings also and the same Court is precluded to go into that question again which has been decided or deemed to have been decided by it at an early stage.” The Hon’ble Court referred to its earlier judgments in the case of *Arjun Singh -vs.- Mohindra Kumar* reported at AIR 1964 SC 993 and in the case of *Satyadhyan Ghosal -vs.- Deorajin Debi* reported at AIR 1960 SC 941.

The second submission of Mr. Banerji was that the parent order dated August 23, 2021, is devoid of any reason at all. Any order including any interim order must be supported by reasons to be recorded in that order. Otherwise, the order is rendered illegal and in fact void. In this connection, Mr. Banerji referred to the Supreme Court decisions in *Shiv Kumar Chadha Etc. -vs.- Municipal Corporation of Delhi* reported at (1993) 3 SCC 161, *Secretary And Curator, Victoria Memorial Hall -vs.- Howrah Ganatantrik Nagrik Samity And Ors.* reported at (2010) 3 SCC 732 and *Gujarat Bottling Co. Ltd. And Ors. -vs.- Coca Cola Co. And Ors.* reported at (1995) 5 SCC 545.

Relying on these decisions, Mr. Banerjee asked for setting aside of the orders under appeal.

Appearing for the writ petitioners/respondents, Mr. Sakya Sen, learned senior counsel submitted that the appellant did not participate in the proceedings before the learned Single Judge at any stage. The appellant has

not filed any affidavit nor has made submission through counsel. The conduct of the appellant does not entitle him to make any grievance against the orders under appeal. The appellant has waited for about four months before challenging the August 23, 2021 order in appeal. The learned Judge is hearing out the matter with great expedition. KMC has concluded its submission. Only the Heritage Commission and the developer remain to advance their arguments. The proceedings before the learned Single Judge are likely to conclude at an early date. Since the stay order has been continuing from August 23, 2021, balance of convenience is in favour of the order being continued till the disposal of the writ petition by the learned Single Judge.

Mr. Sen emphasized that the Court should not help or pass any order in aid of a recalcitrant litigant like the present appellant whose only object has been to delay the proceedings before the learned Single Judge.

We have given our anxious consideration to the rival contention of the parties. When we disposed of the appeal of the developer against the order dated August 23, 2021, we did not go into the merits of the order in view of the fact that the order was due to expire on November 30, 2021 and we were considering the appeal on the previous date i.e. on November 29, 2021. However, presently we have to decide whether the August 23, 2021 order is sustainable in law.

As we have recorded above, a learned Single Judge of this Court at the time of admitting the writ petition refused to pass an interim order of stay of construction. This was affirmed by a Division Bench of this Court by its order dated May 14, 2018. We are of the view that unless there was change of circumstances, no interim order of stay of construction should have been

passed by the learned Single Judge. The principles of *res judicata* do apply to different stages of the same proceedings.

Further, there is no reason recorded in the order dated August 23, 2021 as to why it suddenly became necessary to pass an interim order of stay of construction. With respect, the fact that for whatever reason the Court was unable to hear out the matter before the puja vacation, in our view, is not a reason that can by itself sustain the impugned order of stay of construction. The Hon'ble Supreme Court has laid down in several decisions some of which have been referred to above that reasons are the life-blood of a judicial order.

We are unable to sustain the order dated August 23, 2021 and the subsequent order dated November 29, 2021, which merely continued the earlier order. The said orders are set aside.

We make it clear that nothing herein will prevent the learned Single Judge from passing an interim order if the learned Judge is of the view that same is necessary to do justice to the parties, and such order should reflect the reasons as to why the learned Judge is of the opinion that an interim order of stay of construction should be passed at this stage.

We also hope that the proceedings before the learned Judge would come to an early conclusion. None of the parties shall make any prayer for adjournment without extremely compelling reasons.

We have not dwelt on the merits of the writ petition at all. Our observations are restricted to the order dated August 23, 2021 and the order dated November 29, 2021.

In view of the aforesaid, we need not pass any order on the appeal preferred against the order dated December 3, 2021 which appeal, according

to Mr. Sen, is in any event not maintainable. However, we do not need to decide that point in view of what we have recorded above.

The three appeals along with the connected applications are accordingly disposed of.

Since, affidavits have not been called for, the allegations in the stay petition shall be deemed not to be admitted by the respondents.

We are told that the matter has been fixed for hearing by the learned Single Judge tomorrow i.e. 14th December, 2021. We are sure that the parties will fully co-operate with the learned Judge in proceeding with utmost expedition and bringing the writ petition to an early conclusion.

(ARIJIT BANERJEE, J.)

(KAUSIK CHANDA, J.)