

Item Nos.
4 wt 5
30.03.2022
KOLE

MAT 16 of 2021
With
IA No. CAN 1 of 2021
With
IA No. CAN 2 of 2021

Sri Jaideo Dhanania & Ors.
-Vs.-
Howrah Municipal Corporation & Ors.

With
MAT 102 of 2021
With
IA No. CAN 1 of 2021

Sachin Gupta
-Vs.-
Howrah Municipal Corporation & Ors.

Mr. A. Paul,
Mr. F. Hassan
Ms. S. Basu,

...for the appellants in MAT 16 of 2021.

Mr. C. Gupta,
Mr. N. Dasgupta,
Mr. R. Upadhyay,

...for the appellant in MAT 102 of 2021.

Mr. S. Banerjee,
Mr. A. Sureka,

...for the HMC.

Mr. C. Mookherji,
Mr. P. Pal,

...for the State.

By consent of the parties the appeals and the connected applications are taken up for hearing together.

MAT 16 of 2021 is an appeal filed by the writ petitioners. MAT 102 of 2021 is an appeal filed by the respondent no. 7 in the writ petition.

The writ petitioners approached the learned Single Judge with the grievance that the respondent no. 7 in the writ petition had made unauthorized construction, in deviation from the sanctioned plan, and was carrying on with further unauthorized construction. In spite of representations made before the Howrah Municipal Corporation (in short 'HMC'), the authorities were taking no steps.

The learned Judge recorded in the order impugned that there was a proceeding under Section 177 of the HMC Act. The private respondent had been heard by the Corporation. Report had been drawn up by the Corporation to the effect that there was unauthorized construction by the private respondent. Stop-work and demolition orders had been issued by HMC. The learned Judge directed that in the event the private respondent (appellant in MAT 102 of 2021) failed to demolish the impugned construction by January 31, 2021, HMC shall carry out the demolition work.

Being aggrieved, the private respondent in the writ petition is before us. The writ petitioners were also aggrieved by the fact that the learned Judge granted time till January 31, 2021 for demolition of the impugned construction and did not allow the prayer of the writ petitioners for injunction restraining the private respondent from making further construction.

We have taken up both the appeals together as they arise from the same order. Mr. Gupta, Learned Advocate, appearing for the appellant in MAT 102 of 2021 says that, in

fact, there was no proceeding under Section 177 of the HMC Act. His client was never heard. These submissions are, of course, disputed by learned Counsel for the writ petitioners who are the appellants in MAT 16 of 2021.

Mr. Banerjee, learned Advocate, appearing for the HMC, has made a fair suggestion which we find eminently acceptable. Learned Advocates for the appellants in the two appeals are also not opposed to the idea.

HMC shall grant an opportunity of hearing to the appellants in both the appeals on 06.04.2022 at 02.00 p.m. at the office of the HMC. The appellants/writ petitioners will be at liberty to urge the points that they urged in the writ petition, before the Corporation Authorities. Naturally, the appellant in MAT 102 of 2021 will also be at liberty to demonstrate that he has not made any unauthorized construction or, if there be some deviation, the same is of a minor nature which the Corporation should regularize in exercise of power under the HMC Act.

We have not gone into the merits of the contention of either party. The Corporation Authorities shall take an informed decision in accordance with law and pass a reasoned order after hearing the concerned parties as indicated above.

We are told that the Assistant Engineer-in-Charge (Building Department), HMC, is the appropriate officer to look into the matter. The parties shall attend the office of the said Assistant Engineer-in-Charge (Building Department) on the date indicated above and at the time

fixed by us. Mr. Banerjee, Learned Advocate for the HMC is requested to apprise the said officer that a hearing will take place before him on the aforesaid date at the indicated time.

The order under appeal is set aside. The concerned officer shall pass a reasoned order within three weeks from the date of hearing and shall communicate the same to the parties within a week from the date of the order. If either of the parties fails to appear before the concerned officer on the date and at the time fixed by us in this order, the officer will be at liberty to proceed *ex parte*. The subsisting order of injunction passed by this Court restraining the appellant in MAT 102 of 2021 from making any construction shall continue till the passing of an order by the concerned officer of the HMC as indicated above.

Mr. Gupta, learned Counsel for the appellant in MAT 102 of 2021 says that there is a report on record which has been prepared by an officer of HMC. The report is apparently against his client. He has already filed exception to such report. We make it clear that Mr. Gupta's client shall be at liberty to make his submission in respect of the report before the concerned officer who will consider the same in accordance with law.

Accordingly, the appeals and the connected applications are disposed of.

Urgent photostat certified copy of this order be supplied to the parties, if applied for, as early as possible.

(Kausik Chanda, J.)

(Arijit Banerjee, J.)