

D/L
Item No. 18
25.01.2022
KOLE

**MAT 463 of 2020
With
IA No. CAN 4 of 2020
With
IA No. CAN 5 of 2020**

**Md. Nazim Son & Ors.
-Vs.-
Ekram Khan & Ors.**

*Md. Farhaduddin,
Mr. E. Ghosh,*

...for the appellants.

*Mr. Alok Kr. Ghosh,
Mr. S. Panda,*

...for the KMC.

*Mr. D. Trivedi,
Mr. P. Ladia,
Mr. B. Sing,*

...for the respondent nos. 9 and 10.

Mr. S. Goswami,

...for the heritage commission.

CAN 5 of 2020 is an application taken out by the respondent nos. 9 and 10 in the appeal. In the course of hearing of this application we found that the appeal itself could be disposed of. Hence, by consent of the parties the appeal and the applications are taken up for hearing together.

The brief facts are that the writ petitioner claims to be a tenant of premises no. 27 Ezra Street, Kolkata. He approached the learned Single Judge with the alleged grievance that the respondent nos. 8 and 9 were taking steps to construct a boundary wall to demarcate premises no. 26 from premises no. 27, Ezra Street. If the wall is constructed,

the possession and/or access of the petitioner to the premises of which he claims to be a tenant, would be disturbed.

The respondent nos. 8 and 9 claim to be the lessees under the owners of premises nos. 26 and 27, Ezra Street. Both the premises are said to be grade “I” heritage properties.

The learned Judge by the order dated September 23, 2019, which is impugned in this appeal, granted liberty to the writ petitioner to lodge a comprehensive complaint before the respondent no. 5 being the Chairperson of the West Bengal Heritage Commission. The operative portion of the order under appeal reads as follows:-

“Therefore, this writ petition is disposed of thereby directing the petitioner to lodge a comprehensive complaint before the respondent No. 5, The Chairperson, West Bengal Heritage Commission within seven days from today. After receiving such complaint, the respondent No. 5 is directed to take a decision in accordance with law within four weeks after giving an opportunity of hearing to the petitioner or his authorized representative and the private respondent No. 8 and 9, thereafter communicate the decision to the parties within one week.

Needless to mention, if it is found that the private respondent Nos. 8 and 9 to protect the heritage property in respect of the premises No. 27 is erecting the boundary wall then the respondent No. 5 shall allow the private respondents to complete boundary wall in respect of the premises No. 27. If it is otherwise, then the Respondent No. 5 is at liberty to take appropriate steps in accordance with law.

Till the decision is taking the private respondent No. 8 and 9 are restrained from carrying on construction of boundary wall at the premises in question.”

Pursuant to the aforesaid order of the learned Single Judge, a hearing was held by the West Bengal Heritage Commission on November 29, 2019. The parties to the writ

petition appeared at the hearing. On December 4, 2019 the Commission passed an order permitting the respondent nos. 8 and 9 in the writ petition to erect the boundary wall in respect of premises no. 27, Ezra Street to protect the heritage property subject to the existing rules of the Kolkata Municipal Corporation in that regard. In other words, the order of the learned Single Judge has worked itself out.

Subsequently, this appeal has been preferred by the appellants who were not parties to the writ petition. The appellants say that they are also tenants in respect of the property in question. They were deliberately not made a party in the writ petition. The Heritage Commission passed the order without hearing them. They are prejudicially affected by the order under appeal and the order of the Heritage Commission.

We have heard learned Counsel for the parties. We see that the present appeal was preferred with the leave of a Coordinate Bench which was granted on August 6, 2020. The Coordinate Bench directed maintenance of *status quo* regarding construction of the boundary wall in question.

We are of the view that nothing really remains in the appeal since the order of the learned Single Judge has worked itself out. However, for the ends of justice, we are inclined to grant an opportunity to the present appellants to ventilate their grievance before the Heritage Commission.

Accordingly, we direct the Chairperson of the West Bengal Heritage Commission being the respondent no. 6 in this appeal to grant an opportunity of hearing to the

appellants and all other concerned parties including the parties who were there before the learned Single Judge and pass a fresh reasoned order in accordance with law and the applicable rules and regulations. Till such fresh order is passed, the earlier order of the Heritage Commission dated December 4, 2019 shall remain in abeyance. The fresh order, to be passed, shall be in supersession of the earlier order. We are not putting any fetters on the power of the Heritage Commission to pass appropriate orders for due protection of the heritage properties in question. The Commission will be at liberty to pass any order that it deems necessary for the preservation of the heritage property in question. The entire process shall be completed within a period of two months from the date of communication of this order to the respondent no. 6. The only issue before the Commission will be whether or not it is necessary to demarcate the properties being premises nos. 26, 27 and 31, Ezra Street, Kolkata for protection and preservation of the said heritage properties. It is made clear that the parties will cooperate with the Chairperson of the Heritage Commission to complete the proceedings within the time indicated above. No unnecessary adjournments shall be sought. It is not as if the Commission will be hearing a suit. The parties will be at liberty to file written representations indicating their respective stands.

Since we have not called for affidavits, the allegations made in the stay application are deemed not to be admitted by the respondents and also since we have not called for

affidavits in connection with the application being CAN 5 of 2020, the allegations made therein are deemed not to be admitted by the other parties.

The appeal, being no. MAT 463 of 2020 and the connected applications, being no. CAN 4 of 2020 and CAN 5 of 2020 are accordingly 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.)