

10.
05-08-2022
debajyoti
(Ct. no.06)

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
Appellate Side**

**MAT 716 of 2022
+
IA NO:CAN/1/2022**

**Dilip Kumar Das
Vs.
Dr. Pallav Das & Ors.**

Mr. A. K. Gayen,
Ms. A. A. Gayen

... For the Appellant.

Mr. Mir Anuruzzaman

... For Respondent No.1.

Mr. D. Bhattacharyya

... For Respondent No.4.

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

This appeal has been preferred against an order dated March 29, 2022, whereby CPAN 1043 of 2017 was disposed of holding that no contempt lies against the order dated August 17, 2016 passed by a learned Judge disposing of W.P.9041(W) of 2015.

The present appellant had approached this Court by filing W.P.9041(W) of 2015 alleging that the respondent no.4 herein, being Chanchal Kumar Das, was making unauthorized construction. The writ petition was disposed of by a Learned Judge by the aforesaid order dated August 17, 2016 observing, *inter alia*, as follows:

“ The writ petition is disposed of by directing the Board of Councillors, Rajpur-Sonarapur Municipality to complete the proceeding under Section 220 of the

Act as expeditiously as possible, but preferably within a period of eight weeks from the date of communication of this order in accordance with law and the formalities required to be complied with.

In case the Board of Councillors come to conclusion that the construction had been an unauthorized one, they shall pass necessary and consequential orders under Section 218 of the West Bengal Municipal Act including the order of demolition, if necessary.

The respondent No.7 shall maintain status quo with regard to the construction made by him, as alleged, without the permission of the Municipal authorities in writing. ”

The present appellant filed CPAN 1043 of 2017 against officers of Rajpur-Sonarpur Municipality and the said Chanchal Kumar Das, alleging wilful violation of the aforesaid order dated August 17, 2016. The learned Single Judge, after hearing the contempt application, recorded that subsequent to passing of the order dated August 17, 2016, the Board of Councillors of the said Municipality has taken a decision and passed an order on November 28, 2016, directing Chanchal Kumar Das to demolish the impugned construction. In that view of the matter, the learned Judge opined that there was no contempt and, accordingly, the contempt proceedings were closed. Being aggrieved by that order, the present appeal has been filed.

On July 15, 2022, we recorded an order, which reads as follows:

“ The Board of Councillors of Rajpur-Sonarpur Municipality has, by its order dated November 28, 2016, found that the respondent no.4 herein has made unauthorized construction.

There are earlier orders of this Court which require the Municipality to demolish such unauthorized construction.

It appears that the demolition order was challenged before the Baruipur Court pursuant to the liberty granted by this Court on December 24, 2021 in M.A.T. 1387 of 2021. Such challenge was rejected as being barred by limitation. The applicant challenged the rejection order by way of a civil revisional application. A learned Single Judge of this Court, by order dated April 20, 2022, set aside such rejection order and remanded the matter back to the Baruipur Court for adjudicating the original application on merits. We are told that the next date for hearing is July 27, 2022.

Keeping the aforesaid in view, we adjourn the matter till August 4, 2022. This will give the respondent no.4 herein, who is the applicant before the Baruipur Court, an opportunity for obtaining an order of stay of the demolition order if the Baruipur Court feels that he has a *prima facie* arguable case. ”

Today, learned advocate for the respondent no.4, i.e., Chanchal Kumar Das, produces the relevant Information Slip wherefrom it appears that the learned Civil Judge, Junior Division, 2nd Court, Baruipur, has stayed the operation of the order of the Board of Councillors of the said Municipality dated November 28, 2016 till disposal of Other Appeal No.01/2022, which is pending before the learned Judge. We are told that the present appellant is a party to that proceeding.

Having heard learned counsel for the parties, we are of the opinion that there is no infirmity in the order of the learned Single Judge which has been assailed before us. The respondents in the instant proceedings have not committed contempt of court and the contempt

proceedings were rightly dropped by the learned Single Judge. The present appellant will be at liberty to contest Other Appeal No.01/2022 pending before the learned Civil Judge, Junior Division, 2nd Court, Baruipur.

The appeal and the connected application are, accordingly, disposed of.

All parties shall act on the server copies of this order duly downloaded from the official *website* of this Court.

Urgent photostat certified copies of this order, if applied for, be supplied to the parties on compliance of necessary formalities.

(Rai Chattopadhyay, J.) (Arijit Banerjee, J.)