

4.
02-03-2022
debajyoti
(Ct. no.06)

MAT 585 of 2021
with
IA NO:CAN/1/2021

Sri Asok Santra
Vs.
The State of West Bengal & Ors.

Mr. Sabyasachi Chatterjee,
Mr. Ankur Sharma,
Mr. Sandipan Das,
Mr. Akashdeep Mukherjee,
Mr. Sayan Banerjee

... For the Appellant.

Mr. Sandipan Banerjee,
Mr. Ankit Sureka

... For the H.M.C.

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

This appeal is preferred by the private respondent no.11 in the writ petition against an order dated November 13, 2019 whereby W.P.12183(W) of 2019 was disposed of.

The writ petitioner/respondent had approached the learned Single Judge challenging an order dated February 22, 2018 issued by the Commissioner, Howrah Municipal Corporation (HMC), which was passed upon consideration of a representation of the writ petitioner to the effect that the private respondent has made unauthorized construction and/or not kept the mandatory vacant space. The Commissioner rejected the representation of the writ petitioner by a cryptic order. Aggrieved thereby, the writ petitioner challenged the order before the learned Single Judge.

The learned Single Judge set aside the order of the Commissioner and directed the Commissioner to conduct a fresh hearing either by himself or through a person to be delegated by him. The operative portion of the order of the learned Judge, which is impugned before us, reads as follows:

“ Therefore, I direct the Commissioner, Howrah Municipal Corporation or any person delegated by the Commissioner to conduct a fresh hearing on the basis of the petitioner's representation dated 2nd June, 2016 and also consider whether the mandatory vacant space has been kept by the private respondent no.11 at the time of construction of the said building within four weeks from the date of communication of this order after giving an opportunity of hearing to the petitioner or his authorised representative and the private respondent no.11 or his authorised representative and thereafter communicate the decision to the parties within one week.

Needless to mention, before passing decision the Commissioner, Howrah Municipal Corporation or any person authorised by the Commissioner is directed to supply a copy of the report dated 16th June, 2016 to the petitioner.

Further needless to mention that parties are directed to produce all relevant documents pertaining to the issue involved herein at the time of hearing. If it is found in the hearing that without keeping the mandatory vacant space the private respondent no.11 has constructed the said building then the Commissioner or his authorised person is at liberty to take appropriate step to demolish such portion of that building. ”

Being aggrieved, the private respondent no.11 in the writ petition has come up in appeal.

Mr. Chatterjee, learned advocate, appearing on behalf of the appellant, submits that the appellant had made the construction at a time when the Howrah Municipal Corporation Act was not there. The construction was made strictly in accordance with a plan sanctioned on May 30, 1980 in terms of the Howrah Improvement Trust Act, 1956.

Mr. Chatterjee further says that the HMC Rules do not apply to the construction in question. Hearing is continuing before the Commissioner.

We are of the view that the appellant can have no real grievance in respect of the order impugned. The order clearly says that the Commissioner will grant opportunity of hearing to all concerned including the appellant. The appellant should participate in the hearing before the Commissioner and we permit the appellant to urge all points before the Commissioner including the point of applicability of the HMC Rules to the property in question. We have not gone into the merits of the matter. The Commissioner shall take an informed and reasoned decision in accordance with law and the applicable rules and regulations, within eight weeks from the date of receipt of a copy of this order, after giving an opportunity of hearing to all concerned including the appellant.

We do not find any reason to interfere with the order impugned. Needless to say, if the Commissioner finds any unauthorized construction or any deviation from the sanctioned plan, he will take appropriate follow-up action strictly in accordance with law.

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

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

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.

(Kausik Chanda, J.)

(Arijit Banerjee, J.)