

13 & 14.
14-07-2022
debajyoti
(Ct. no.06)

MAT 925 of 2022
+
IA NO:CAN/1/2022

Sandhya Ghosh
Vs.
Sri Partho Ghosh & Ors.

W I T H

MAT 1005 of 2022
+
IA NO:CAN/1/2022

Shri Partho Ghosh
Vs.
The Howrah Municipal Corporation & Ors.

Mr. Pradip Kumar Roy,
Mr. Soumen Ghosh
... For the Appellant in MAT/925/22.

Mr. P. C. Paul Chowdhury,
Mr. A. Bhattacharyya,
Mr. D. Mukherjee
... For Respondent No.1 in MAT/925/22
& Appellant in MAT/1005/22.

Mr. Sandipan Banerjee,
Mr. Ankit Sureka,
Mr. Sobhan Majumder
... For the Howrah Municipal
Corporation.

Mr. Ayan Banerjee,
Ms. Debasree Dhamali
... For the Bally Municipality.

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

These two appeals arise out of the same order dated June 07, 2022, whereby the learned Single Judge disposed of WPA 7478 of 2022.

It appears that in an earlier round of litigation, Sandhya Ghosh (appellant in MAT 925 of 2022) had approached the Writ Court complaining that Partho Ghosh (appellant in MAT 1005 of 2022) was making unauthorized construction, but representations made to the concerned Municipality were in vain. The writ petition was disposed of by directing the authorities to consider the representations and pass a reasoned order. Pursuant to such order of the Court, the Assistant Engineer, Howrah Municipal Corporation passed an order dated March 17, 2022, the operative portion whereof reads as follows:

“ That upon considering the submissions of the petitioner and the Respondent and also considering the inspection report of the SAE dated 16.03.2022 it is crystal clear that there is deviation of 295.98 sq. meters from the sanctioned plan and it is hereby ordered that the respondent will cause self-demolition of the deviated portion within fortnight from the date of communication of this order and in default HMC will be at liberty to cause demolition of the said deviated portion after the said period for which the respondent will have to bear the costs of such demolition. ”

Being aggrieved by the said order of the Assistant Engineer, Partho approached the learned Single Judge in the present round of proceedings.

The learned Judge while disposing of the writ petition, observed as follows:

“ It appears from the impugned order dated 17th March, 2022 that the area where there has been deviation is mentioned in the order, but the specific portion of the deviation has not been indicated therein. Unless the petitioner is made specifically made aware of the portion where deviation has been made the petitioner will not be in

a position to effect demolition of the deviated portion.

In view of the vagueness in the order of demolition that has been passed on 17th March, 2022 the same is liable to be set aside and is accordingly set aside. ”

The learned Judge sent back the matter to the Administrator of the Bally Municipality to reconsider the matter afresh after giving fresh opportunity of hearing once again to the writ petitioner as well as other parties.

Being aggrieved, Sandhya has preferred an appeal being MAT 925 of 2022. She contends that there is a report of the Chairman of Bally Municipality on record which clearly indicates the extent of deviation from the sanctioned plan in which construction was made by Partho. Such report was not placed before the learned Single Judge. It was wholly unnecessary to set aside the order of the Assistant Engineer and send back the matter for fresh consideration.

Partho has also preferred an appeal being MAT 1005 of 2022. His grievance is that the order has been passed giving a complete go-bye to the statutory provisions embodied in Section 218 of the West Bengal Municipal Act, 1993.

We have considered the rival contention of the parties. We are not in agreement with the submission made on behalf of either of the appellants.

Insofar as Sandhya's appeal is concerned, we are of the view that the learned Judge was perfectly justified in setting aside the order of the Assistant Engineer on the ground of vagueness. The order must stand on its own. If for ascertaining the true scope and effect of an order,

one has to refer to other documents, then on that ground alone, the order would be deficient. An order should be self-explanatory and self-sufficient. We are of the view that the Assistant Engineer's order was such kind of an order which did not indicate with any degree of precision, the illegal construction made by Partho which was in deviation from the sanctioned plan.

Insofar as Partho's appeal is concerned, we see that Section 218 of the 1993 Act empowers the Board of Councillors of the Municipality to pass orders of modification, demolition etc. if the Board is satisfied that the erection of any building has been done without sanction or permission under the law or in deviation from a sanctioned plan. Presently, Bally Municipality does not have a Board of Councillors, as we are told. There is an Administrator who is discharging the functions of the Board. Accordingly, the learned Single Judge has sent the matter back to the Administrator of the Municipality for fresh consideration. We see absolutely no infirmity in the order impugned before us. We, however, clarify that the Administrator shall take steps in accordance with the order of the learned Single Judge and naturally, in accordance with law, meaning thereby the provisions of the applicable statutes including the West Bengal Municipal Act, 1993. A decision shall be taken by the Administrator within ninety days from the date of communication of this order to the Administrator. It will be a reasoned order and will be passed after granting an opportunity of hearing to all concerned parties, including the present appellants. Needless to say that if the Administrator finds that there is any unauthorized construction, appropriate orders will be issued by him in that behalf.

The appeals and the connected applications 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.)