

31.03.2022
Item No.19
Court No.6.
S. De

Through Video Conference

M.A.T. 1054 of 2021

I.A. No. CAN 1 of 2021

Kalpana Bhattacharjee & Ors.

Vs

The State of West Bengal & Ors.

Mr. Apurba Kumar Ghosh,

Mr. Rudranil Ghosh,

...for the appellants.

Mr. Sandipan Banejee,

Mr. Ankit Sureka,

...for the H.M.C.

Mr. K.M. Hossain,

...for the writ petitioners/respondent.

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

This is an appeal against a judgment and order dated September 16, 2020, whereby WPA 6196 of 2020 was disposed of along with a connected application.

The writ petitioners had approached the learned Single Judge with the grievance that the respondent nos. 8 to 12 in the writ petition who are the appellants before us have been making construction on a plot adjacent to the property of the debottar estate, in deviation from the sanctioned plan granted by the Howrah Municipal Corporation and was also encroaching upon the land of the writ petitioners. In

spite of complaint made to the Corporation, no steps were taken. Hence, the writ petition was filed.

In the impugned order the learned Judge observed as follows:-

“The Commissioner of Howrah Municipal Corporation will consider the complain of the petitioners and take such steps as prescribed by the Howrah Municipal Corporation Act and Rules framed thereunder.

It is made clear that if any deviation from the sanctioned plan is detected then the Corporation shall act and proceed in accordance with law.

It is further made clear that the Corporation cannot go into the question of title and as such the petitioners are at liberty to approach the Civil Court, if there is a dispute over boundary and measurements.

However, the Howrah Municipal Corporation shall be at liberty to demolish any unauthorised construction if the same has been made in deviation of the sanctioned plan and if the said deviation is over the some portion of the petitioner’s land.

While considering the allegations made by the petitioners the Corporation shall make an inspection in presence of all the parties and an opportunity of hearing should be given to all interested parties.”

Being aggrieved, the respondent nos.9 to 12 in the writ petition are before us by way of this appeal.

This appeal has become infructuous. Pursuant to the order of the learned Single Judge, the Howrah Municipal Corporation has passed an order of demolition on September 22, 2021. If the appellants are aggrieved by the said order, they will have to challenge the same before the appropriate forum in accordance with law.

We understand that the provisions of the Howrah Municipal Corporation Act provide for an appeal to the Appellate Tribunal in Howrah against an order of demolition. However, learned advocate for the Howrah Municipal Corporation apprises us that as of now no such Tribunal is functional in Howrah. In that view of the matter, the present appellants may have to approach some other appropriate forum as they may be advised.

MAT 1054 of 2021 is, accordingly, disposed of along with the connected application being I.A. No. CAN 1 of 2021.

Urgent certified photostat copy of this order, if applied for, shall be given to the parties as expeditiously as possible on compliance with all the necessary formalities.

(Kausik Chanda, J.)

(Arijit Banerjee, J.)