

04. 31.08.2022
Ct. No.6
Tanmoy

M.A.T. 1159 of 2022

**Md. Rafik Molla
-Versus-
Maheshtala Municipality & Ors.**

**With
IA No: C.A.N. 1 of 2022**

Mr. Hare Ram Singh, Adv.

...for the appellant.

Mr. Raghunath Chakraborty, Adv.

...for the Maheshtala Municipality.

Mr. S. Shah, Adv.,
Mr. Md. Shamim Halder, Adv.

...for the respondent no.5.

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

This appeal is directed against a judgment and order dated July 19, 2022, whereby, the appellant's writ petition being W.P.A. 14124 of 2022 was dismissed by the learned Single Judge.

In an earlier writ petition being W.P.A. 19314 of 2021 (*Sk. Kabir Uddin – Vs. – State of West Bengal & Ors.*), the writ petitioner therein had alleged that the private respondent nos. 6 to 8 in that writ petition had made unauthorized construction on the concerned land. A demolition order dated September 28, 2021, had been passed by the Chairperson of the Maheshtala

Municipality, but the order was not being implemented. The writ petitioner prayed for implementation of the demolition order.

It had been submitted before the learned Judge in that earlier writ petition, on behalf of the private respondents, that the said respondents had approached the learned Civil Judge (Junior Division), 3rd Court at Alipore, with an appeal against the demolition order in terms of Section 218(3) of the West Bengal Municipal Act, 1993 and an application had been filed for obtaining *interim* stay order. The learned Judge was of the opinion that some time should be granted to the private respondents to try and obtain orders from the appellate forum. Accordingly, the said writ petition was disposed of by an order dated February 14, 2022, by passing the following direction:-

“This order is being passed not on the merits of the claims of the respondent nos.6 to 8, but on the appreciation of the fact that due to the irregular functioning of the civil courts during the pandemic situation, the litigants may not have been able to approach the courts with expedition and the courts may not have been available to pass urgent orders.

Under such circumstances, the writ petition is disposed of with a direction upon the Maheshtala Municipality to take steps for implementation of the order after a period of three months from date of communication of this order. If within the said period, the respondent nos.6 to 8 do not produce any protective order and/or interim order against such order of demolition before the municipality, the municipality will be at liberty to proceed with the demolition, in accordance with law.”

It appears that the persons responsible for the unauthorized construction, who had approached the civil Court by way of appeal, were unsuccessful in obtaining *interim* order. The Municipality, by an order dated June 17, 2022, fixed July 5, 2022, as the date for carrying out demolition of the unauthorized construction. At this stage, the present writ petition was filed for staying the demolition proceedings.

Before the learned Single Judge, the writ petitioner submitted that he was not a party to the earlier writ petition. The private respondents herein submitted that the present writ petitioner was a private respondent in the earlier writ petition.

Without going into that controversy, the learned Judge dismissed the writ petition by observing as follows:-

“The petitioner has filed the present writ petition for staying the demolition proceeding. The petitioner submits that no notice was given to him prior to passing the order of demolition.

Learned advocate representing the private respondent submits that the petitioner was a party in the earlier writ petition.

Be that as it may, as it appears that being aggrieved by the order of demolition an appeal has been preferred by the petitioner wherein he failed to obtain any order of stay, accordingly, the Municipality shall proceed with the demolition of the unauthorised construction as per the schedule fixed by the Municipality.

There is no need for interference in the present writ petition.

The Officer-in-Charge, Maheshtala Police Station shall render all necessary assistance to the Maheshtala Municipality at the time of conducting the demolition proceeding.

The writ petition stands dismissed.”

We have heard learned Counsel for the parties. We see absolutely no infirmity in the order of the learned Single Judge. The persons responsible had approached the appellate forum challenging the demolition order passed by the Municipality. They have failed to obtain *interim* protection. In the earlier writ petition, by the order dated February 14, 2022, the learned Single Judge had granted three months time for obtaining order of stay from the appellate forum, making it clear that upon expiry of three months, the Municipality would be at liberty to demolish the impugned construction unless in the meantime the appellate forum sets aside or stays the operation of the demolition order. That order dated February 14, 2022, was not challenged by anybody before a higher forum and the same attained finality. Hence the Municipality would be at liberty to implement its demolition order in question. We are of the view that unauthorized constructions made by unscrupulous builders have highly deterrent effect on the society at large and the persons responsible for such constructions deserve no sympathy. We find no ground to interfere with the order under appeal.

The appeal being M.A.T. 1159 of 2022 and the connected application being IA No: C.A.N. 1 of 2022 are accordingly dismissed.

Let urgent Photostat certified copies of this order, if applied for, be made available to the parties upon compliance with all necessary formalities.

(Apurba Sinha Ray, J.)

(Arijit Banerjee, J.)