

2.
05-08-2022
debajyoti
(Ct. no.06)

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

**MAT 1171 of 2022
+
IA NO:CAN/2/2022**

**Smt. Padma Rani Dutta
Vs.
The State of West Bengal & Ors.**

Mr. Arindam Banerjee,
Ms. Piyali Duta,
Mr. Gaurab Kumar Das
... For the Appellant.

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

Mr. Aryak Dutt,
Mr. Abhisek Banerjee
... For Respondent No.9.

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

This appeal is directed against an order dated January 18, 2018, whereby W.P.27997(W) of 2014 was disposed of. The impugned order reads as follows:

“ Mr. Bahini (sic; read, Bihani), learned Counsel appearing on behalf of the Howrah Municipal Corporation files a report in the form of an affidavit today in Court duly affirmed by the Commissioner of Howrah Municipal Corporation. Let the same be kept with the record.

From the reading of the report, it transpires that a notice of self-demolition has been issued upon the

private respondents, Smt. Pada (sic; read, Padma) Rani Dutta & others on January 16, 2018.

The Howrah Municipal Corporation is directed to continue to act in accordance with the order passed on December 7, 2017 and as per their notice issued on 16th January, 2018.

Accordingly, the writ petition is disposed off. ”

Being aggrieved, the private respondent in the writ petition has come up in appeal.

Learned advocate for the appellant says that initially a self-demolition notice was issued by Howrah Municipal Corporation (in short ‘HMC’) in the year 2011. The appellant challenged the same by filing a writ petition in this Court. Subsequently, on advice, the appellant withdrew such writ petition and approached HMC for regularization of the alleged unauthorized construction in deviation from the sanctioned plan. HMC assessed and intimated to the appellant the retention charges in the year 2015. In the year 2016, the appellant paid such retention charges to the tune of approximately Rs.1.15 lakh. Even thereafter, a self-demolition notice was issued by HMC. For implementation of such notice, the present writ petition was filed by one Smt. Alpana Paul. Such writ petition was disposed of by the order impugned in this appeal.

We are told that a demolition notice has been issued by HMC on July 19, 2022, after refunding to the appellant the retention charges that she had deposited. The appellant has not accepted such refund. The appellant has challenged such demolition notice before a learned Single Judge of this Court by filing WPA 17246 of 2022. An interim order dated July 29, 2022, has been

passed in that writ petition granting interim protection to the present appellant who is the petitioner in that writ application. The matter has been made returnable by the learned Judge on August 08, 2022.

We are of the view that since a fresh demolition notice has been issued, which is under consideration by a learned Single Judge of this Court, all previous proceedings and orders are now matters of academic interest. However, it is in the fitness of things that the present writ petitioner, who is the respondent no.9 in this appeal, and at whose instance the order impugned in this appeal was passed, should be heard by the learned Single Judge, who is in seisin of WPA 17246 of 2022. The learned Judge is requested to decide that writ petition without being influenced by any of the past orders of this Court or the present order. The order under appeal shall remain permanently stayed. However, as indicated above, the permanent stay of the impugned order will not have any effect on the writ petition pending before the learned Single Judge, who is requested to decide the matter without being influenced by anything that has happened in the past, as if the demolition notice which is under challenge in WPA 17246 of 2022 is completely a new episode.

The appellant is directed to add the respondent no. 9 herein as a respondent in WPA 17246 of 2022. Needless to say that after adding the respondent no.9 herein, as a respondent in WPA 17246 of 2022, a copy of the writ petition shall be served on learned advocate for the respondent no.9. The parties before the learned Single Judge, including the added respondent, shall be at liberty to urge all points that may be available to them in 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.

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