

D/L
Item No. 22
05.08.2022
KOLE

**MAT 1219 of 2022
With
IA No. CAN 1 of 2022**

**Sri Bikash Dutta
-Vs.-
The State of West Bengal & Ors.**

*Mr. Subrata Mukherjee,
Mr. A. Ghosh,
Mr. N. Chatterjee,*

...for the appellants.

*Mr. Sudipto Panda,
Mr. M. Tewary,*

...for the State.

*Mr. R. Chatterjee,
Mr. V. Chatterjee,
Mr. A. Mitra,*

...for the private respondent.

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

An *interim* order dated July 15, 2022, passed in WPA 9799 of 2022, is under challenge in this appeal.

The appellant has approached the learned Single Judge, being aggrieved by a notice dated May 20, 2022, issued under Section 215 of the West Bengal Municipal Act, 1993, whereby he was directed to demolish an alleged unauthorized construction within 30 days from the date of receipt of the notice.

Before the learned Single Judge the appellant contended that no new construction is being made. The property in question was damaged during cyclone Amphan and was merely being renovated. The learned Judge

adjourned the matter till July 15, 2022 and called for a report from the concerned Municipality. The learned Judge passed an *interim* order dated July 1, 2022, restraining the respondents from taking coercive action in respect of the property in question till the next date of hearing.

On July 15, 2022, the Municipality filed the report that was called for. The report was to the effect that the construction in question appears to be a new construction for which no permission has been granted.

Learned Advocate for the appellant/writ petitioner sought time to take exception to the report. Such time was granted. However, the learned Judge vacated the interim protective order. The matter is pending before the learned Judge.

Being aggrieved by the learned Judge vacating the interim order, the writ petitioner has come up in appeal before us.

We have heard learned Counsel for the parties. The Municipality is not represented.

We have seen the report filed by the Municipality before the learned Judge. The report is very cryptic. If the Learned Judge deems it fit, the learned Judge may consider calling for a more detailed report.

Be that as it may, we are of the view that since the writ petitioner has been granted an opportunity of taking exception to the Municipality's report, the *interim* order should have been continued till such time that such

exception is placed before the learned Judge and the learned Judge has considered such exception.

Accordingly, we restore the *interim* order that was passed by the learned Judge on July 1, 2022. Such *interim* order shall continue till the end of September, 2022, or until further order that may be passed by the learned Judge, which ever is earlier. The appellant shall file his exception to the report of the Municipality within a week from date. The parties will be at liberty to request the learned Single Judge for early hearing to the extent the business of the court may permit.

We have not gone into the merits of the controversy between the parties. Since we have not called for affidavits, the allegations made in the stay application are deemed not to be admitted.

The appeal and the connected application is accordingly disposed of.

Urgent photostat certified copy of this order be supplied to the parties, if applied for, as early as possible.

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