

**02.
11.01.2022.
Ct. No. 11.
F.B./gsd**

**MAT 1310 of 2021
with
IA No. CAN 1 of 2021**

(Via Video Conference)

**Milan Das
-Vs.-
Sri Arjun Das & Ors.**

**Mr. J. K. Mukhopadhyay
Mr. Mary Datta
Mr. Purnasish Gupta
..... For the Appellant.**

**Mr. Sandeepan Banerjee,
Mr. Ankit Sureka
..... For the HMC.**

**Mr. Animesh Paul
... for the respondent no.1**

Party/Parties is/are represented in the order of
their name/names as printed above in the cause title.

By the previous order of this Court dated 6th
January, 2022, this Court directed the Assistant
Engineer Borough VII, Howrah Municipal Corporation
(HMC) to hold a meeting in presence of Learned Counsel
for the appellant and for the private respondent
no.1/the writ petitioner.

Mr. Banerjee, Learned Counsel for the HMC produces a Report of the hearing conducted by the Assistant Engineer Borough VII. Such Report is signed by the Assistant Engineer, Borough VII and counter-signed by the both the appellant and the respondent no.1/the writ petitioner. The Report, *inter alia*, reads as follows:

“Both the Appellant and Private Respondent no.1 attend in hearing on today.

During hearing Private Respondent no.1 Sri Arjun Das stated that, ‘ he is the owner of premises Dag no. (R.S.) 4203, (L.R.) 4662, Mouja – Unsani, J. L. NO. 110. He said that he has got the plot by inheritance from his father Late Dharmodas Das. He said that his southern side owner Sri Milon das has made unauthorise ground floor construction over the open land without sanction plan. He also said that Sri Milon Das encroached his property partly on southern side by forcefully and gathered brick bats and rubbish over his plot. He said that H.M.C. should take legal action against unauthorized construction of Sri Milon Das.’

During hearing Appellant Sri Milon Das stated that, ‘he is the owner of premises Dag No.

(L.R.) 4650, 4652, 4654, 4660, Mouja- Unsani, J. L. No. 110. He said that he has an existing very old mud brick wall with tiles shed structure of ground floor. He said that due to damage of existing tile shed he has made construction brick wall with four nos. RCC Columns and casted roof newly of ground floor without sanction building plan. He said that he has not encroached the property of Sri Arjun Das. He also said that he has made unauthorise construction of ground floor approximate 300 sq. ft. He admit his fault and begs for excuse.”

Mr. Banerjee, Learned Counsel, therefore submits and, correctly so to the mind of this Court, that the appellant has admitted to the unauthorised construction and since the entire construction is unauthorised, there is no scope for any portion of it to be regularised assuming but not admitting that the appellant claims to make out a case for regularisation.

Mr. Purnasis Gupta, Learned Counsel, appearing for the appellant, submits that the order of demolition passed by the Assistant Engineer, Borough VII under Section 177(1) of the Howrah Municipal Corporation Act, 1980 (for short, HMC Act) is governed by the provisions of Section 177(3), also of the HMC Act, 1980.

The HMC Act under Section 177(3) (*supra*) provides for a provision of appeal. It is accordingly submitted by the appellant that the appellant be allowed to exhaust the provision of appeal.

Mr. Paul, Learned Advocate, appears for the respondent no.1/the writ petitioner and reiterates the submission made by the Private Respondent no.1/the writ petitioner before the Assistant Engineer, Borough-VII at the hearing.

Having heard the parties and considering the materials placed, this Court is *ad idem* that the stand taken by HMC that the entire construction being unauthorised, there is no scope for regularising any portion of it.

This Court is of the further view that notwithstanding the provisions of appeal and the exercise of jurisdiction under Article 226 of the Constitution of India being not always alternate, in the facts of this case the appellant not having resiled from the position that the construction is unauthorised as recorded by the Assistant Engineer, Borough-VII, this Court is entitled to exercise jurisdiction in the light of the admitted facts.

Accordingly, the HMC/the respondents shall be now entitled to act in terms of the order of the Hon'ble Single Bench without further delay.

Before parting with this discussion this Court must notice the argument of Mr. Gupta to the effect that an interim direction was passed by the concurrent Hon'ble Division Bench on the 24th of December, 2021 restraining the HMC from taking any steps for demolition of the appellant's property for a period of three weeks from date.

It is submitted that the said period of three weeks have not expired. It is therefore submitted that the appellant continues to deserve the protection granted by the order dated 24th of December, 2021.

This Court notices that by the order dated 24th of December, 2021, an interim order was passed with the observation that the observations made in the order dated 24th of December, 2021 are only *prima facie* and shall not have any bearing at the final hearing.

The matter was next directed to be listed on the 6th of January, 2022. The matter has been so listed on the 6th of January, 2022 before this Court for hearing.

The final hearing of the matter is accordingly concluded today also before a Hon'ble Division Bench.

It is also further noticed that the directions of this Court dated 6th January, 2022 for holding a hearing before the Assistant Engineer, Borough-VII were complied with by the parties, including the appellant.

In the above view of the matter, this order passed by a concurrent Hon'ble Division Bench upon final hearing shall now bind the parties.

MAT 1310 of 2021 along with **CAN 1 of 2021** stand thus **dismissed**.

Documents filed today be retained with the record.

All parties to act in terms of the copy of the order downloaded from the official website of this Court.

Urgent photostat certified copies of this order, if applied for, be given to the parties upon compliance of all necessary formalities.

(Krishna Rao, J.)

(Subrata Talukdar, J.)