

2.
09-02-2022
debajyoti
(Ct. no.06)

MAT 1333 of 2021
with
IA NO:CAN/1/2021

DSK Real Estates Limited
Vs.
The Commandant, Ordnance Depot & Ors.

Mr. Mukul Rohatgi, Sr. Adv.,
Mr. Abhrajit Mitra, Sr. Adv.,
Mr. Arindam Banerjee,
Mr. Debanjan Mandal,
Mr. Biswajit Kumar,
Mr. Kunal Vajani,
Mr. Sarvapriyo Mukherjee
... For the Appellant.

Mr. Nandlal Singhanian,
Mr. Debu Choudhary,
Ms. Ankita Chowdhury
... For Respondent No.1.

Mr. Achintya Kumar Banerjee,
Mr. Tarun Chatterjee,
Mr. Ranjit Chatterjee
... For the K.M.C.

Mr. Anindya Kumar Mitra, Sr. Adv.,
Mr. Soumya Majumdar,
Mr. Soumya Roychowdhury,
Mr. Sourav Bhagat,
Mr. Depan Kumar Sarkar,
Ms. Shruti Swaika
... For Respondent No.6.

Mr. Anirban Ray, learned G.P.,
Mr. Raja Saha,
Mr. Rajat Dutta
... For the State.

Mr. Rajib Mukherjee
... For the BSNL.

Mr. Y. J. Dastoor, learned ASG,
Mr. Ram Chandra Agarwal
... For Respondent No.15.

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

This appeal is directed against an interim order dated December 09, 2021 passed in WPA 13756 of 2021.

The appellant/respondent no.5 is a builder. It has undertaken a project for constructing a 42-storied building on a plot which appears to be in the immediate vicinity of a Depot of the Indian Army in Calcutta. The Commandant, Ordnance Depot, filed the writ petition contending that the appellant should not be permitted to continue with the construction of the high-rise as the same would cause security hazard. Initially, the learned Single Judge passed an order on October 01, 2021, refusing any blanket injunction, *inter alia*, because of the delay on the part of the writ petitioner to approach court. However, it was made clear that the construction would continue at the risk and peril of the developer. No equity will be claimed in respect of the entire construction. The entire construction will abide by the result of the writ petition.

The matter subsequently came up before the learned Judge on December 09, 2021. The Ministry of Defence appeared and made submission. The learned Judge restrained the developer from making construction beyond 23 floors till January 07, 2022 when the matter was directed to be listed before the learned Judge. We are told that the matter was thereafter not listed before the learned Judge.

The appellant has come up against the order dated December 09, 2021 contending that it is suffering huge loss by reason of the restrictive order that was passed by the learned Judge.

We have heard the parties at length. Various issues have been raised by the parties including the question of maintainability of the writ petition. Guidelines of 2011 and 2016 issued by the Ministry of Defence have been placed before us. Mr. Rohatgi, learned Senior Advocate, appearing for the appellant, has drawn our attention to various provisions of the Workshop Defence Act, 1903, which, according to Mr. Dastoor, learned Additional Solicitor General, representing the Ministry of Defence, does not apply to the city of Calcutta.

Mr. Anindya Kumar Mitra, learned Senior Counsel, appearing for the respondent no.6, contends that no question of national security is involved in this case, which is strongly disputed by Mr. Singhania, learned counsel, appearing for the writ petitioner, and learned Additional Solicitor General, appearing for the Ministry of Defence.

We are of the view that it is not necessary for us to consider or dilate on all such issues. The interim order dated December 09, 2021, was subsisting when the appeal was filed on December 14, 2021. However, it appears that there is no subsisting interim order after January 07, 2022. Accordingly, the appeal has become infructuous.

We are of the opinion that all the issues raised by the parties should be argued before the learned Single Judge. The appellant/respondent no.5 says that it does not wish to file Affidavit-in-Opposition as the same is not necessary. Since the issue involved in this case is of some importance and also concerns national security, according to the writ petitioner, we request the learned Single Judge to give some

precedence to this matter and dispose of the matter as soon as the business of the court may permit.

We have not gone into the merits of the respective contentions of the parties. The learned Judge shall be free to decide the writ petition in accordance with law and the applicable rules and regulations.

Mr. Singhania, learned counsel, appearing for the writ petitioner/respondent says that he should be permitted to pray for extension of interim order before the learned Single Judge. We do not think any such liberty is necessary.

The appeal and the connected application are 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.

(Kausik Chanda, J.)

(Arijit Banerjee, J.)