

02.09.2022
Item No.10
Court No.6.
S. De

M.A.T. 1425 of 2022
I.A. No. CAN 1 of 2022

Mobarak Ali Molla.
Vs
Mehatabali @ Mehatab Ali Molla & Ors.

Md. Sarwar Jahan,
Mr. Maidul Islam Kayal,
...for the appellant.
Mr. Raghunath Chakraborty,
Ms. Amrita De,
...for the Maheshtala Municipality.
Mr. Pampa Dey (Dhabal),
...for the respondent no.1.
Mr. Wazim Ahmed,
Sk. Md. Masud,
...for the State.

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

This appeal is directed against a judgment and order dated August 17, 2022 passed in W.P.A. 21342 of 2021. That order is an interim order.

It appears that Maheshtala Municipality had passed an order dated February 19, 2021 for demolition of a property of which the appellant claims to be the owner. He says that it is his dwelling house. Learned advocate for the appellant says that after the demolition order was passed, several representations were made before the competent authority for recalling such order and permitting the appellant to repair the

property. That is why appeal against the said order was not filed immediately.

The respondent/writ petitioner approached the learned Single Judge for implementation of the demolition order. The learned Judge passed the following directions :-

“The Officer in Charge of the Maheshtala Police Station, being the respondent no.5, is directed to extend all cooperation to the men and agents of the Maheshtala Municipality at the time of demolition of the unauthorized construction. The Municipality shall ensure that the demolition is carried out positively within a period of three weeks from date.

*Let the matter appear on **8th September, 2022**, marked ‘For Orders’ to ascertain whether the demolition work has been executed or not.”*

Being aggrieved, the owner of the property concerned has come up in appeal.

It is submitted on behalf of the appellant that the appellant has filed a statutory appeal against the demolition order before the 6th Court of Civil Judge (Jr.

Division) at Alipore being Misc. Appeal No.2 of 2022. Summons have been issued in such appeal. The appellant requests for some time to try and obtain a stay order.

We are not impressed with the explanation furnished for not preferring appeal against the demolition order for so long. However, taking a lenient view and for the ends of justice, we grant time to the appellant till the end of November, 2022 to either obtain a stay order or have the demolition order set aside by the appellate forum. Till the end of November, 2022, no coercive step will be taken by the Municipality against the property in question. It is made clear that if by the end of November, 2022, the appellant is unable to obtain a stay order or have the demolition order set aside, the Municipality shall immediately implement the demolition order and the Officer-in-Charge of the Maheshtala Police Station shall extend all co-operation to the Municipality for implementation of the demolition order.

The appeal being MAT 1425 of 2022 is, accordingly, disposed of along with the application being I.A. No. CAN 1 of 2022.

No useful purpose would be served by keeping the writ petition pending. The same is treated as on day's list and is, accordingly, disposed of.

Since we have not called for affidavits, the allegations contained in the stay petition are deemed not to be admitted by the respondents.

Urgent certified photostat copy of this order, if applied for, shall be given to the parties as expeditiously as possible on compliance with all the necessary formalities.

(Apurba Sinha Ray, J.)

(Arijit Banerjee, J.)