

02. 25.02.2022
Ct. No.06
Tanmoy

F.M.A. 3553 of 2015
(M.A.T. 1374 of 2015)
With
IA No: C.A.N. 1 of 2015 (Old No: C.A.N. 9576 of 2015)
With
IA No: C.A.N. 2 of 2021

Sri Ajay Nath Yadav @ Ahiri
-Versus-
The State of West Bengal & Ors.
(Through Video Conference)

Mr. S. Sarkar, Adv.,
Mr. Ayan Dutta, Adv.,
Mr. Anjan Bhattacharya, Adv.

...for the appellant.

Ms. Manjuli Chowdhury, Adv.,
Ms. Mekhla Sinha, Adv.

...for the Howrah *Zilla Parishad*.

Affidavit of service filed in Court today, be kept with
the record

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

This is an appeal against a judgment and order
dated July 16, 2015 whereby W.P. No. 32118(W) of 2014
was disposed of. The operative portion of the impugned
judgment and order reads as follows:-

*“Be that as it may, the clock cannot be put
back. There is no point in keeping the petition
pending. The writ petition is disposed of by directing
the District Engineer, Howrah Zilla Parishad, to take
all possible steps against the unauthorized
construction made by the private respondent*

including the deviation, if any, from the sanctioned building plan in accordance with law and the procedure laid down therefor.

A notice to that effect is to be issued within two weeks from the date of communication of the order. The Howrah Zilla Parishad is directed to take appropriate follow-up action. The police authorities are directed to render all possible assistance, if necessary. The cost of this police assistance shall be borne by the petitioner. In any case the Howrah Zilla Parishad is directed to see to it that the private respondent does not continue with the unauthorized construction which has been found by them on enquiry. the entire exercise shall be completed within a period of ten weeks from the date of the issue of notice to the private respondent.”

The private respondent no.6, who is the appellant before us, says that after passing of the impugned order, the appellant has made a representation dated December 28, 2015, to the District Engineer, Howrah *Zilla Parishad*, Howrah. Learned Counsel submits that the representation may be considered and disposed of in accordance with law and the applicable bye-laws. If such an order for consideration is passed, the appellant would not proceed with the appeal further.

Our attention has been drawn to the relevant bye-laws. It appears that the *Zilla Parishad* has discretion to regularize unauthorized constructions and constructions made in deviation from the sanctioned plan. Needless to say, such discretion must be exercised judiciously and not arbitrarily.

We are also told that presently it is the Building Committee which is the Authority for considering whether a structure can be regularized or not.

Accordingly, we direct the Building Committee of the Howrah *Zilla Parishad* to consider the appellant's representation dated December 28, 2015 and take a reasoned decision thereon, in accordance with the applicable bye-laws and the law in general, within a period of eight weeks from the date of communication of this order to the Building Committee, after giving an opportunity of hearing to the appellant or his authorized representative. The decision so taken, shall be communicated to the appellant within a week from the date of the decision. Needless to say, if the Building Committee finds that the impugned construction cannot be regularized, necessary follow-up action shall be taken by it.

The appeal being F.M.A. 3553 of 2015 and the connected applications being IA No: C.A.N. 1 of 2015 (Old No: C.A.N. 9576 of 2015) and IA No: C.A.N. 2 of 2021 are accordingly disposed of.

Let urgent photostat certified copies of this order, if applied for, be supplied to learned Advocates for the parties upon compliance with all usual formalities.

(Kausik Chanda, J.)

(Arijit Banerjee, J.)