

13.12.2022
Item No.15
Court No.6.
S. De

M.A.T. 1654 of 2022
with
I.A. No. CAN/1/2022

Abu Hussain Querashi & Ors.
Vs
Shaikh Md. Salim Rahamgul & Ors.

Mr. Amitava Pain,
Mr. Noni Gopal Chakraborty,
...for the appellants.
Mr. Rwitendra Banerjee,
Mr. Devdutta Pathak,
...for the writ
petitioner/respondent no.1.

Mr. Sougata Mitra,
...for the Purulia Municipality

Affidavit-of-service filed in Court today, be kept
with the records.

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

This appeal is directed against a judgment and
order dated September 6, 2022 whereby the writ
petition of the respondent no.1 was disposed of.

The respondent no.1 herein had approached the
learned Single Judge with the grievance that the
present appellants who are private respondents in the
writ petition had constructed illegal shop-rooms on the
concerned land.

A report was called for from the concerned Block Land and Land Reforms Officer. From such report it appeared that the impugned construction has narrowed down the subject road and is causing hindrance to movement of heavy vehicles. In that background, the learned Judge disposed of the writ petition with the following observations :-

“As it appears that the Block Land and Land Reforms Officer has already conducted a spot inspection and has come to a finding that the construction has narrowed the subject road and is causing hindrance to the movement of the heavy vehicles, accordingly, the concerned officer of the Purulia Municipality is directed to take steps for removal of any unauthorized construction that has narrowed the road and is causing hindrance to the movement of the heavy vehicles.

Necessary steps shall be taken in the matter after giving a reasonable opportunity of hearing to the persons who constructed the goomty or are carrying on business in the said goomty.

The Municipality shall ensure that the removal is made within a period of twelve weeks from the date of communication of a copy of this order.”

Being aggrieved, the private respondents have come up by way of this appeal.

Learned advocate for the writ petitioner has produced a copy of an order dated December 8, 2022 passed by the Chairman of the Purulia Municipality. It appears from the said order that the parties were given a hearing on December 3, 2022. By the said order the Chairman of the Municipality has directed removal of the impugned construction being seven numbers of goomtias.

It thus appears that the appellants herein could not produce documents to show that the impugned construction is authorized. In any event, the order dated December 8, 2022 would furnish a fresh cause of action to the appellants. They may challenge such order before the appropriate forum in accordance with law, if they are so advised. We see no apparent infirmity in the order under appeal which, in our view, does not warrant any interference.

However, purely on humanitarian grounds, we direct that no steps be taken for removal of the impugned construction for a period of ten days from today. If within the said period of ten days, the appellants are unable to obtain any favourable order from any competent forum, the order for removal of the impugned construction shall be implemented forthwith.

It is made clear that the ten days' breathing space granted to the appellants by this order is peremptory and the Municipality shall, under no circumstances, stay its hands beyond the said period.

We have not gone into the merits of the case and all points are left open to be decided by the appropriate forum.

M.A.T. 1654 of 2022 is, accordingly, disposed of along with the application being I.A. No. CAN 1 of 2022.

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.)