

22. 13.12.2022
Ct. No.6
Tanmoy

MAT 1896 of 2022

**Seema Ghosal
-Versus-
Rupali Nag & Ors.**

**With
IA No: CAN/1/2022**

Mr. M.P. Gupta, Adv.,
Mr. Ayan Mitra, Adv.

...for the appellant.

Mr. Rajendra Banerjee, Adv.,
Mr. Joy Chakraborty, Adv.

...for the writ petitioner/
respondent no.1.

Mr. Sandipan Banerjee, Adv.,
Mr. Sobhan Majumder, Adv.,
Mr. Ankit Sureka, Adv.

...for the Howrah
Municipal Corporation.

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.

A judgment and order dated November 14, 2022,
whereby the writ petition of the respondent no.1 herein
being WPA 15143 of 2022 was disposed of, is under
challenge in this appeal, at the instance of the private
respondent in the writ petition.

The writ petitioner approached the learned Single
Judge with the grievance that the present appellant was
making unauthorized construction. The learned Judge, by

an *interim* order dated September 28, 2022, recorded that a spot inspection had been conducted. The learned Judge directed that the inspection report be circulated amongst the parties and directed the matter to be listed on November 14, 2022.

On November 14, 2022, the matter was taken up by the learned Judge, the inspection report was taken on record and copies thereof were handed over to learned Advocates representing the petitioner as well as the private respondent. The learned Judge noted that the report mentions that *“presently construction is being done in the 3rd floor at rear space on the eastern side of old G+3 storied building.”* The learned Judge also noted that a self-demolition letter was issued on July 8, 2022, which was followed by a second self-demolition notice issued on July 26, 2022. Having so noted, the learned Judge disposed of the writ petition by directing as follows:-

“As it appears from the report that the self-demolition notice is yet to be acted upon by the person responsible for making construction, accordingly, the Howrah Municipal Corporation is directed to proceed with the demolition work in accordance with law, at the earliest.”

Being aggrieved, the private respondent in the writ petition has come up by way of this appeal.

The short grievance of the appellant is that although by the order dated September 28, 2022, the learned Judge had directed that the inspection report be circulated amongst the parties, the same was not done. The appellant was given a copy of the inspection report on

the day the matter was disposed of. Resultantly, the appellant did not get an opportunity of dealing with the report.

The grievance of the appellant appears to have some substance. Principles of natural justice require that the copy of the report is made available to the appellant and she gets an opportunity of responding to the report. This opportunity, the appellant did not get since on the day her Advocate was given a copy of the report, the writ petition was disposed of by the learned Single Judge.

Further, the writ petition was disposed of without directing exchange of affidavits.

We remand the matter back to the learned Single Judge having determination to hear the writ petition for fresh consideration after exchange of affidavits. The respondents will be at liberty to file affidavit-in-opposition by December 22, 2022. In her affidavit, the present appellant will be at liberty to deal with the inspection report. Reply thereto, if any, be filed by the reopening day after 'Christmas Vacation' (02.01.2023).

The parties will be at liberty to mention the matter before the learned Single Judge after completion of affidavits. Since there are allegations of unauthorized construction, we request the learned Single Judge to give some precedence to this matter to the extent the business of the Court may permit.

The order under appeal is accordingly set aside.

The learned Judge is requested to decide the matter afresh after exchange of affidavits.

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

The appeal being MAT 1896 of 2022 and the connected application being IA No: CAN/1/2022 are accordingly disposed of.

Let urgent photostat certified copy of this order, if applied for, be made available to the parties upon compliance with all necessary formalities.

(Apurba Sinha Ray, J.)

(Arijit Banerjee, J.)