

21.12.2022
Item No.14.
Court No.6.
AB

**M.A.T. 1983 of 2022
With
IA CAN 1 of 2022**

**Saibal Kumar Ghosh
Vs
Ranaghat Municipality & Others**

Mr. Srijib Chakraborty,
Mr. Sunny Nandy,
Mr. Anand Jha,
Mr. Tamal Singha Royfor the Appellant.

Mr. Achintya Kr. Banerjee,
Ms. Indumouli Banerjee
.....for the Ranaghat Municipality.

Mr. Abhijit Sarkar,
Mr. Raja Biswasfor the Private Respondent.

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

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

A judgment and order dated November 29, 2022, is under challenge in this appeal.

The appellant had approached the learned Single Judge by filing WPA No.21899 of 2022 seeking implementation of an order of demolition passed by the Ranaghat Municipality on March 23, 2019, under Section 218 of the West Bengal Municipal Act, 1993. It appears that there were earlier rounds of litigation between the parties, which presently are not germane.

The private respondent has preferred a statutory appeal against the order of demolition. The allegation of the writ petitioner is that the private respondent obtained sanctioned plan for construction of building on three plots of land but also made construction on a fourth plot of land without having any sanctioned plan therefor. We are not concerned with the merits of the case since the statutory appeal is pending before the competent Civil Court.

It appears that initially, the private respondent herein, who has preferred appeal against the demolition order, obtained an order of stay from the Appellate Court. However, such stay order subsequently stood vacated. Thereupon, the present appellant insisted that the Municipality should carry out the demolition order since the stay was vacated. Alleging inaction on the part of the Municipality, the appellant approached the learned Single Judge in the present round of litigation.

The learned Judge heard the parties and disposed of the writ petition with the following observations:

“It appears from the submissions made on behalf of all the parties and upon perusal of the materials on record that the order of demolition which the petitioner seeks implementation is under scrutiny before the appellate forum. Though the stay order which was granted has been vacated but the appeal is still pending.

In the event the construction is demolished prior to the appeal being heard and decided by the competent Court, the appeal will be rendered infructuous. It will be

impossible for the parties to revert to the position of status quo ante if ultimately the appellate forum rejects the order of demolition.

For the ends of justice, the learned appellate forum considering Misc. Appeal No.1 of 2019 is directed to proceed with the appeal and endeavour to dispose of the same at the earliest but positively within 30th June, 2023 without granting any unnecessary adjournments to either of the parties.

The learned appellate forum shall decide the matter on merits without being influenced by any observations made hereinabove.

The parties will be bound to comply the direction passed by the appellate forum in the pending appeal.”

Being aggrieved, the writ petitioner has preferred this appeal. His contention is that since the impugned construction is unauthorized, demolition order has been issued and there is no stay of operation of the demolition order, the learned Single Judge ought to have directed the Municipality to immediately implement the demolition order.

We have heard learned Counsel for the parties. We find no gross infirmity in the order impugned. The learned Judge is right in observing that the statutory appeal will become infructuous if the demolition order is executed prior to disposal of the appeal. In the event the appeal succeeds, it will not be possible for anybody to restore the status quo ante, if, in the meantime, the impugned construction is demolished.

However, in our opinion, June 30, 2023, is too long a period for disposal of the appeal. We request the learned Court, where the appeal is pending, to dispose

of the appeal as expeditiously as possible but definitely by March 31, 2023. The Court shall not grant unnecessary adjournments to either of the parties. Any attempt by any of the parties to delay the disposal of the appeal shall be dealt with strictly by the learned Court.

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

With the aforesaid modification of the order impugned in this appeal, M.A.T. No.1983 of 2022 is disposed of along with IA CAN 1 of 2022.

Urgent photostat certified copy of this order, if applied for, be supplied expeditiously after compliance with all the necessary formalities.

(Apurba Sinha Ray, J.)

(Arijit Banerjee, J.)