

09.02.2023
Item no.8
Court No.6.
AB

**M.A.T. 28 of 2023
With
I A CAN 1 of 2023**

**Moitry Dutta
Vs
South Dum Dum Municipality & Others**

Mr. Arjun Roy Mukherjee,
Mr. Pratip Mukherjee,
Mr. Sudip Basufor the Appellant.

Mr. N. C. Bihani,
Ms. P. B. Bihanifor the Municipality.

Mr. Sabyasachi Mukherjee,
Mr. Bibek Dey,
Mr. Syed Neaz Ahmed
.....for the Respondent No.6.

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

Supplementary Affidavit filed on behalf of the appellant, be kept with the records.

This appeal is directed against a judgment and order dated December 13, 2022, whereby the writ petition of the private respondent herein being WPA 813 of 2020 was disposed of.

The writ petitioner had approached the learned Single Judge with the case that the appellant herein, who was the private respondent in the writ petition, is making illegal construction in deviation from the building plan that was sanctioned in her favour by the

concerned Municipality. The writ petitioner says that he had made a representation to the Municipality, firstly to demolish the illegal construction and secondly, to revoke the plan sanctioned in favour of the appellant herein.

It appears that during the pendency of the writ petition, the Municipality passed an order of demolition on September 7, 2022. Such order has been carried in appeal by the present appellant before the appellate forum. Initially, there was an order of stay before the appellate forum. It appears that such stay order has not been extended after November, 2022.

The present appellant was not represented before the learned Single Judge. This was noted by the learned Judge. The learned Judge disposed of the writ petition with the following observations:

“In view of the order that I propose to pass, no prejudice shall be caused to the non appearing respondent, if the writ petition is disposed of in the following manner.

The instant writ petition is accordingly disposed of by directing the South Dum Dum Municipality to take steps for consideration of the petitioner’s prayer seeking revocation/setting aside of the sanctioned plan granted in favour of the private respondent Ms. Moitry Datta and to execute the order of demolition, provided, the same is not stayed/modified/varied or set aside by any Court of competent jurisdiction.

The entire exercise shall be completed by the Municipality in accordance with law, after giving reasonable opportunity of hearing to all the necessary parties positively within a period of twelve weeks from the date of communication of a copy of this order. A reasoned order shall be passed and communicated to the parties immediately thereafter.”

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

We are not inclined to enter into the merits of the case, since the appellant herein was not present before the learned Single Judge on the day the impugned order was passed. Learned Advocate for the appellant produces track report to show that notice of the writ petition was received by the appellant at 4.48 p.m. on the day the matter was disposed of. Therefore, it is evident that the appellant received notice of the writ application after disposal of the same.

The appellant will be at liberty to approach the learned Single Judge with an appropriate application stating the aforesaid facts. If so approached, the learned Single Judge is requested to decide such application in the manner the Learned Judge deems fit and proper.

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

M.A.T. No.28 of 2023 is, accordingly, disposed of along with IA CAN 1 of 2023.

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.)