

10.02.2023
Item no.6
Court No.6.
AB

**M.A.T. 86 of 2023
With
I A CAN 1 of 2023**

**Sachindra Nath Kundu
Vs
The State of West Bengal & Others**

Mr. Nilanjan Bhattacharya,
Mr. Arpan Guha,
Mr. Abhilash Chatterjee,
Mr. Saikat Deyfor the Appellant.

Mr. Vinay Mishra
.....for the Respondent No.6 to 10.

Ms. Sutapa Sanyal,
Mr. Anand Farmaniafor the State.

Mr. Sandipan Banerjee,
Mr. Anik Sureka,
Mr. Sovan Majumdarfor the HMC.

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

This appeal is directed against a judgment and order dated January 9, 2023, whereby the appellant's writ petition being WPA No.11852 of 2021 was, in effect, dismissed.

The appellant approached the learned Single Judge challenging an order of demolition of a building. It appears that the entire building is unauthorized inasmuch as no sanctioned building plan was obtained for construction of the building.

The learned Judge noted that the appellant /writ petitioner has made an application to Howrah Municipal Corporation for regularization of the unauthorized structure. However, the learned Judge was of the opinion that the application for regularization made after issuance of the demolition order cannot be permitted to be considered because that would set a bad precedent. In every case of unauthorized construction facing order of demolition, an application will be filed by the erring builder to regularize the unauthorized construction to delay implementation of the demolition order.

The learned Judge, accordingly, disposed of the writ petition by directing the Corporation to take steps for implementation of the demolition order in accordance with law, at the earliest, but positively within 12 weeks from the date of communication of the order. Being aggrieved, the writ petitioner is before us by way of this appeal.

Learned Advocate for the appellant says that his client, who is more than 75 years old, purchased the property in 1950s. The building was constructed in the 1930s. Whether or not the building was constructed after obtaining sanctioned plan, cannot be ascertained after 90 years. The appellant of-course has constructed a bathroom on the third floor without obtaining sanctioned plan. He is willing to demolish

that bathroom. His application for regularization should be considered by the Corporation before implementation of the demolition order.

In principle, we agree with the learned Single Judge. A person, who applies for regularization, after an order of demolition is issued, generally deserves no sympathy. However, this is a case, which may be a little different. The entire building was not constructed by the appellant. He purchased the building about 20 years after the same was constructed. He says that he came to know that there was no sanctioned plan for the building only when he was served with the demolition order.

Considering that the building has been there for over 90 years and the appellant was not responsible for construction of the building, as a matter of exception and without setting any precedent, we direct the Corporation to dispose of the regularization application of the appellant, in accordance with law and the applicable Rules and Regulations, by a reasoned order, within a period of six weeks from the date of communication of this order, along with a copy of the application for regularization, after giving an opportunity of hearing to the appellant, the private respondents as also other neighbours of the appellant, who, according to the appellant, had given their No Objection for construction of the building, if the same

is necessary. Needless to say, if the application for regularization is rejected, the order of demolition will be implemented forthwith. Likewise, if the regularization application is allowed to any extent, naturally, the demolition order shall not be implemented to that extent.

We have not gone into the merits of the appellant's case. It is for the Corporation to decide the regularization application of the appellant in accordance with law being uninfluenced by any observation in this order.

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.86 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.)