

02.02.2023
Item No. 05.
Court No.6.
S. De

M.A.T. 108 of 2023
with
I.A. No. CAN/1/2023

Md. Gyasuddin @ Giasuddin Mohammad.
Vs
The State of West Bengal & Ors.

Mr. Raghunath Chakraborty,
Md. Apzal Ansari,
Mr. Rajdeep Bhattacharya,
Mr. Shahnawaz Alam,
...for the appellant.
Mr. Kamalesh Bhattacharya,
Mr. Surendra Kr. Sharma,
Mr. Hirak Kumar Basu,
...for the writ petitioner.
Mr. Raja Saha,
Mr. Debraj Sahu,
...for the State.
Mr. Fazlul Haque,
Ms. Ina Bhattacharyya,
...for the K.M.C.

The order dated January 25, 2023 be corrected by substituting the date **January 18, 2023** in place and stead of **January 4, 2023** in the second line of the order.

The order dated January 25, 2023 also be corrected by substituting the name, **Mrs. Ina Bhattacharyya** in place and stead of **Mrs. Ira Bhattacharyya** who had appeared on behalf of the Kolkata Municipal Corporation.

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

Read order dated January 25, 2023.

An interim order dated January 18, 2023 passed by the learned Single Judge in WPA 8450 of 2022, is the subject matter of challenge in this appeal.

By the order impugned, in effect, the learned Judge has directed implementation of a demolition order issued by the Kolkata Municipal corporation (K.M.C.) to the appellant herein.

The appellant who is the respondent no.7 in the writ petition, submits that the demolition order was passed by the Special Officer (Building) behind his back, without serving any notice of hearing on him. This was disputed by learned counsel for the respondent/writ petition and learned counsel for the Corporation, when the matter was taken up for hearing on January 25, 2023.

Accordingly, we had directed K.M.C. to produce the relevant records of the case. We had also directed production of the records of the writ petition as the appellant also contended that the writ petition was not served on him.

The K.M.C. has produced the records today. We see that there is a notice addressed to the appellant but there is no evidence that the notice was actually served on the appellant. In the absence of anything to show actual service of notice of hearing before the

Special Officer (Building), we have to proceed on the basis that no such notice was served on the appellant.

The records of the writ petition have also been produced. It appears that the address of the appellant (respondent no.7 in the writ petition) mentioned in the cause title is 45/1, Rafi Ahmed Kidwai Road, Kolkata-700016. It further appears from the affidavit-of-service filed before the learned Single Judge that service of the writ petition was effected at the aforesaid address. The appellant, however, says that he does not reside at that address. He has annexed to the stay petition a photocopy of his Aadhaar Card, which shows his address as 37/3, Dr. Suresh Sarkar Road, Entally, Kolkata-700014. Hence, he says that he did not receive notice of the writ petition and hence he was unable to appear before the learned Single Judge.

We do not wish to enter into the controversy as to whether or not the appellant has anything to do with the address mentioned in the writ petition. The writ petitioner says that at the address where service was effected, a company runs its registered office and the appellant is a Director of that company. The appellant of course disputes such submission.

Be that as it may, we have indicated above that since there is nothing in the records of K.M.C. to show that actual service of notice of hearing before the Special Officer (Building) was effected on the appellant,

purely on the ground of breach of principles of natural justice and without entering into the merits of the case at all, we set aside the demolition order of the Special Officer (Building) and remand the matter back to him for taking a fresh decision in accordance with law and the applicable Building Rules after affording opportunity of hearing to all concerned parties including the appellant and the writ petitioner herein.

The Executive Engineer of the concerned Borough No.VIII shall make available copies of the demolition sketch along with the precis to the appellant as well as the writ petitioner by February 6, 2023. The appellant and the writ petitioner or their authorized representatives will visit the office of the Executive Engineer on February 6, 2023 at 2.00 P.M. to collect such documents. Thereafter, the Special Officer (Building) shall grant a hearing to the appellant and the writ petitioner or their authorized representatives on February 18, 2023 at 12.00 noon. No further notice of such hearing shall be given to the parties. This order shall operate as the notice. The Special Officer (Building) will be at liberty to hear such other person as he may deem necessary. The Special Officer (Building) shall pass a reasoned order in accordance with law within a fortnight of conclusion of hearing. If necessary, he will be at liberty to hold more than one hearing. He will take a fresh decision

without being influenced by anything in the demolition order that we have set aside. We make it clear that we are not binding the hands of the Special Officer (Building) in any manner. He shall be at liberty to pass any order in accordance with the applicable Building Rules. Copy of the order to be passed by the Special Officer (Building) shall be made available to the appellant as well as the writ petitioner within a week from the date of the order.

No useful purpose will be served by keeping the writ petition pending.

Accordingly, the writ petition being WPA 8450 of 2022, MAT 108 of 2023 and CAN 1 of 2023 stand disposed of. The order under appeal is set aside.

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.)