

20.02.2023
Item No. 10.
Court No.6.
S. De

**M.A.T. 133 of 2023
with
I.A. No. CAN/1/2023**

**Khairunnesa Bibi.
Vs
The State of West Bengal & Ors.**

Mr. Partha Sarathi Bhattacharyya, Sr. Adv.
Mr. Tanmoy Sarkar,
Mr. Paw2an Kr. Gupta,
Ms. Sofia Nessar,
Mr. Tanweer J. Mondal,
Mr. Santanu Sett,

...for the appellant.

Mr. Rabindra Narayan Dutta,
Mr. Sutanu Chakrabarti,
...for the State.

Mr. Sandipan Banerjee,
Mr. Ankit Sureka,
Mr. Sobhan Majumder,
...for the Howrah Municipal Corporation.

Mr. Sarwar Jahan,
Mr. Jagabandhu Roy,
Mr. Joy Chakraborty,
Mr. Sandip Dinda,
...for the respondent no.5

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

A judgment and order dated January 18, 2023, which is interim in nature, is under challenge in this appeal. The writ petition is pending before the learned Judge and has been directed to be listed on February 21, 2023.

The respondent no.5 herein approached the learned Single Judge with the complaint that the

appellant herein, who had sanction for construction of a G+2 storey building, in her favour, constructed two additional floors. It appears that a self-demolition order was issued and hung up on the premises in question on November 28, 2022. The respondent no.5/writ petitioner wanted implementation of the demolition order.

The appellant herein submitted that an as-made-plan has been submitted for consideration before the Howrah Municipal Corporation.

The learned Judge observed that construction cannot be made without a proper sanctioned plan and the order of demolition is liable to be executed and implemented. The Corporation was directed to ensure that the demolition order is executed at the earliest, if necessary, with the aid and assistance of the Police.

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

On behalf of the appellant it is submitted that the appellant has made a prayer for re-sanction of the building plan by the Corporation which, if allowed, would in effect regularize the impugned structure. The appellant says that in view of the available FAR and the width of the road in front of the property, she can make construction of two additional floors.

Learned advocate appearing for the respondent no.5/writ petitioner strenuously disputes the

submission made on behalf of the appellant. He further says that the application for re-sanction was made after filing of the writ petition. He further says that from page 69-70 of the stay petition it would appear that the original sanction was granted by the Corporation in 2009. Beyond five years from the date of sanction, the plan could not be relied upon.

Learned advocate for the Corporation says that extent of deviation from the sanctioned plan needs to be determined by following the procedure contemplated under Section 177 of the Howrah Municipal Corporation Act. Apart from the additional two floors, if deviation from the sanctioned plan is noticed in respect of the other floors also, the same will have to be removed as well.

Let the Corporation initiate proceedings under Section 177 of the Howrah Municipal Corporation Act immediately and conclude the same within four weeks from date (March 20, 2023). The Corporation shall give an opportunity of hearing to the appellant and the respondent no.5 herein. Before taking any final step for demolition, the Corporation shall dispose of the appellant's application for re-sanction of the building plan. Whatever decision the Corporation takes on such application will also be after granting an opportunity of hearing to the appellant and the respondent no.5.

No further construction work shall be carried on by the appellant. Needless to say if the Corporation rejects the appellant's application for re-sanction of building plan and finds that construction has been made in deviation from the building plan that was sanctioned in 2009, it will take immediate steps for demolition of such unauthorized construction, if necessary with the assistance of the Police. The Officer-in-Charge of the jurisdictional Police Station is directed to render all co-operation and assistance to the Corporation in case of demolition of the unauthorized structures. As a corollary, it follows that if the impugned construction is found not to be in deviation from the sanctioned plan, no coercive step will be taken.

Learned advocate appearing for the appellants submits that no useful purpose will be served by keeping this appeal or the writ petition pending.

The appeal being MAT 133 of 2023 is disposed of along with the application being I.A. No. CAN/1/2023 and the writ petition being WPA 27351 of 2022.

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.)