

15.05.2023
Item No.6, 7.
Court No.6.
AB

M.A.T. 247 of 2023
With
I A CAN 1 of 2023, I A CAN 2 of 2023

Rakesh Kumar Nayek
Vs
Smt. Sandhya Bhattacharya & Others

With

M.A.T. 246 of 2023
With
I A CAN 1 of 2023, I A CAN 2 of 2023

Rakesh Kumar Nayek
Vs
Howrah Municipal Corporation & Others

Mr. Mahendra Prasad Gupta,
Ms. Antara Panja,
Ms. Supriya Marajan ...for the Appellant.

Mr. Sandipan Banerjee,
Mr. Ankit Sureka,
Mr. Sovan Majumdar ...for the HMC.

Mr. Ayan Banerjee,
Ms. Debasree Dhamali,
Ms. Riya Ghosh ...for the Bally Municipality.

Mr. Abhishek Halder,
Ms. Praniti Bandopadhyay,
Mr. Swadesh Misra,
Ms. Madhurima BasuFor the Respondent
No.1 in MAT 247 of
2023 & Respondent
No.11 in MAT 246 of 2023.

By consent of the parties, the appeals and the
applications are taken up for hearing together.

In re : IA CAN 1 of 2023 in MAT 247 of 2023

This is an application for condonation of delay of 135 days in filing the appeal. Causes shown being sufficient, the delay is condoned.

I A CAN 1 of 2023 is, accordingly, disposed of.

In re : IA CAN 1 of 2023 in MAT 246 of 2023

This is an application for condonation of delay of 151 days in filing the appeal. Causes shown being sufficient, the delay is condoned.

I A CAN 1 of 2023 is, accordingly, disposed of.

In re : MAT 247 of 2023, CAN 2 of 2023 & MAT 246 of 2023, CAN 2 of 2023

By the judgment and order dated September 5, 2022, impugned in these two appeals, two writ petitions were disposed of. One was WPA 10272 of 2022 filed by the respondent no.1 in MAT 247 of 2023. The other was WPA 9593 of 2022 filed by the present appellant.

The Howrah Municipal Corporation had issued an order directing the appellant herein to demolish what, according to the Corporation, was unauthorized construction. Such demolition order appears to have been passed at the instance of the respondent no.1 in MAT 247 of 2023 (Sandhya Bhattacharya).

The present appellant, Rakesh, filed his writ petition challenging the demolition order. Sandhya filed her writ petition for implementation of the demolition order. Both the applications were disposed

of by a common judgment and order, which is the subject matter of challenge in these two appeals.

Before the learned Single Judge, it was submitted that the construction in question fell within Bally Municipality. Hence, Rakesh contended that Howrah Municipal Corporation could not have passed the order of demolition. Such order is without jurisdiction and a nullity.

The learned Judge, in view of the fact that the property presently falls under the jurisdiction of Bally Municipality by reason of the relevant Notification dated November 12, 2021, issued by the Department of Urban Development & Municipal Affairs, directed Bally Municipality to conduct a fresh inspection of the premises in question to verify the allegation of unauthorized construction made by Rakesh. The learned Judge disposed of the two writ petitions with the following observations:

“Inspection shall be conducted by the Bally Municipality within a fortnight from date upon giving prior notice of hearing to the petitioner, the private respondent and all other necessary parties.

The Administrator of the Bally Municipality is directed to pass a reasoned order upon consultation of the inspection report within a period of six weeks thereafter and communicate the same to all the parties immediately thereafter.

If it transpires upon inspection that there is any unauthorized construction, then necessary steps shall be taken by the Administrator, Bally Municipality to deal with the same in accordance with law.

Learned advocate for the petitioner in WPA 10272 of 2022 is directed to forward a copy of the representation alleging unauthorized construction to the Administrator of Bally Municipality.

As there is already an order of demolition passed by the Howrah Municipal Corporation, accordingly, the petitioner in WPA 9593 of 2022 i.e. Rakesh Kumar Nayek is restrained from making any further construction on the said property and also restrained from transferring, alienating, handing over possession of any portion of the said premises till a final order is passed by the Administrator, Bally Municipality in this regard.”

Being aggrieved, Rakesh has come up before us by way of these two appeals.

It appears that the order of the learned Single Judge has been carried out inasmuch as the Bally Municipality has passed an order dated March 1, 2023, directing the private respondents in WPA 10272 of 2022 (Sandhya’s writ petition) to demolish the unauthorized construction. In that view of the matter, nothing really survives in these two appeals. Since the appellant is aggrieved by the order of the Bally Municipality, the appellant will have to challenge the same before the appropriate forum in accordance with law. The order of the Bally Municipality furnishes the appellant with a fresh cause of action, which cannot be adjudicated upon in the present appeals.

We have not gone into the merits of the case. In the event, the appellant challenges the demolition order of the Bally Municipality, the appellate forum

shall decide the appeal in accordance with law without being influenced by any observation in this order or in the order of the learned Single Judge.

A copy of the demolition order passed by Bally Municipality has been made over by learned Advocate for the Municipality to learned Advocate for the appellant in Court today.

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

MAT 247 of 2023 and CAN 2 of 2023 stand disposed of along with MAT 246 of 2023 and CAN 2 of 2023.

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

(Arijit Banerjee, J.)

(Apurba Sinha Ray, J.)