

25.04.2023
Item No.5.
Court No.6.
AB

M.A.T. 478 of 2023
With
I A CAN 1 of 2023
I A CAN 2 of 2023

English Bazar Municipality & Others
Vs
Malda Real Estate P. Ltd. & Others

Mr. P. S. Bhattacharya, Sr. Adv,
Ms. Sonal Sinha,
Mr. Avishek Prasad ...for the Appellants.

Mr. Pradyumna Sinha,
Mr. Samidhya Datta
...for the Respondent Nos.1 and 2.

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

Affidavit of service filed in Court today, be kept with the records.

In re : IA CAN 2 of 2023

This is an application for condonation of delay of 355 days in filing the appeal. Causes shown being sufficient, the delay is condoned.

I A CAN 2 of 2023 is, accordingly, disposed of.

In re : MAT 478 of 2023, IA CAN 1 of 2023

The respondent nos.1 and 2 in this appeal approached the learned Single Judge by filing W. P. No.5666 (W) of 2020 with the grievance that the appellant Municipality was not paying any heed to the complaint of the writ petitioners to the effect that the private respondents in the writ petition were making

unauthorized construction on a plot of land adjoining the plot of the writ petitioners.

On July 9, 2020, a learned Single Judge of this Court had directed the Executive Officer, English Bazar Municipality, Malda and the Superintendent of Police, Malda to ensure that no construction work is carried out at the premises in question until further orders. The Executive Officer of the Municipality was directed to file a report before the Court with regard to the complaint lodged by the writ petitioners on the next date of hearing.

On August 14, 2020, a learned Single Judge passed an order, the material portion whereof reads as follows:

“Let the municipality and other respondents file affidavit in opposition within two weeks. Reply, if any, be filed within one week thereafter.

Let the matter be listed after expiry of four weeks after normal function of the court resumed.

The respondent no.4, Executive Officer, English Bazar Municipality, Malda, is directed to see that no further unauthorized construction is carried on at the premises in question. Filing of affidavit by the respondent no.4. shall not exempt him from filing the report before this court as he has been directed by the order dated 9th July, 2020.

However, it is made clear that pendency of this writ petition shall not preclude the concerned municipality to take appropriate decision to initiate proceeding for demolition of the alleged construction.”

Being aggrieved by the aforesaid two orders, the Municipality has come up in appeal.

The writ petition is pending before the learned Single Judge and we are told that the same has been directed to be listed before the learned Single Judge tomorrow (26.4.2023). We are also told that a contempt application filed by the writ petitioners for alleged wilful violation of the aforesaid two orders passed by learned Single Judges of this Court, has also been directed to be listed along with the writ petition.

In view of the aforesaid, we are not inclined to interfere with the orders under appeal. In any event, nothing has been finally decided by the orders under appeal. The learned Judge is requested to decide the writ petition upon exchange of affidavits, if necessary, in the manner the learned Judge may deem fit and proper.

Mr. Bhattacharya, learned Senior Counsel appearing for the appellants says that the contempt application should not be proceeded with till the disposal of the writ petition.

We make no such order. However, it will be open to the writ petitioners to make such prayer before the learned Single Judge.

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

MAT No.478 of 2023 stands 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.)