

D/L
Item No 05
20.06.2023
KOLE

**FMA 969 of 2022
With
IA No. CAN 1 of 2022**

**Muktar @ Muktar Ahmed
-Vs.-
The Howrah Municipal Corporation & Ors.**

*Mr. Mahendra Prasad Gupta,
Mr. A. Mitra,
Mr. S. Mahajan,*

...for the appellant.

*Mr. Sandipan Banerjee,
Mr. A. Surekha,
Mr. S. Majumder,*

...for the respondent no. 1.

*Mr. Mokaram Hossain,
Mr. S. Maity,*

...for private respondents.

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

A judgment and order dated February 4, 2020, whereby the writ petition of the respondent nos. 9 to 12 herein being WP 13122 (W) of 2019 was disposed of, is under challenge in this appeal at the instance of the respondent no. 9 in the writ petition.

It appears that the writ petitioners approached the learned Single Judge with the grievance that the private respondents were making unauthorized and illegal construction. Howrah Municipal Corporation (in short “HMC”) issued a show cause notice dated July 13, 2018, to the private respondents, but thereafter, did not take any steps. This prompted the writ petitioners to approach learned Single Judge.

Learned Advocate for the private respondents submitted before the learned Judge that the writ petitioners are parties to a civil suit where the private respondents were also parties. Further, an earlier writ petition being WP No. 22407 (W) of 2018 (Md. Shahid-vs.-HMC & Ors.) was dismissed by a learned Single Judge by an order dated November 28, 2018 on the ground that Md. Shahid was a party to the civil suit pending between the parties. Learned Advocate submitted that the present writ petition is identical with the earlier one and, therefore, should be dismissed following the earlier order referred to above.

Learned Advocate for HMC submitted that the Corporation had detected unauthorized construction and had accordingly issued show case notice.

The learned Single Judge disposed of the writ petition with the following directions:-

“By order dated 28th November, 2018 in Md. Shahid (supra), the writ petition was dismissed as coordinate Bench found it inappropriate to interfere when there is civil suit pending between parties. It may well be that a co-plaintiff or co-defendant has again petitioned on same cause, being a persisting cause of unauthorized construction made. The cause is to be determined by the Corporation per provisions in Howrah Municipal Corporation Act, 1980. That can have nothing to do with rights of parties yet to adjudicated in a civil suit.

The Corporation will follow through on said show cause notice. In event it finds cause shown to be sufficient, same will be informed in writing to petitioner, on reasons for sufficiency found. Otherwise, the proceeding must be initiated within four weeks. Initiation of proceeding or sufficiency of cause shown intimated to petitioners, must be done in that time.”

Being aggrieved, the respondent no. 9 in the writ petition has come up by way of this appeal.

Learned Advocate for the appellant submitted before us that three earlier similar writ petitions being, WP No. 22407 (W) of 2018, WP No. 11001 (W) of 2017, WP No. 16257 (W) of 2013 were dismissed on the ground of pendency of the civil suit where the writ petitioners and the private respondents are parties. The appellant herein wanted to bring the records of such writ petitions before the learned Single Judge by way of affidavit. However, opportunity to file affidavit was not given by the learned Judge. In the earlier round of litigation, a learned Single Judge clearly observed that the issues raised in that writ petition which are similar to the issues raised in the present writ petition, were already sub-judice in the civil suit before a competent court. On that ground, WP No. 22407 (W) of 2018 was dismissed. The learned Judge should have followed such order and dismissed the present writ petition also.

Learned Advocates appearing for the respondents/writ petitioners and for HMC drew our attention to an order dated December 11, 2017 passed by the learned Howrah Court in Title Suit No. 119 of 2013. That suit has been filed by the writ petitioner herein. The appellant is a defendant in that suit. It appears that an order of injunction had been passed at the instance of the plaintiff in that suit. However, on an application under Order 39 Rule 4 of the Code of Civil Procedure, the injunction order

was modified and the defendant no. 1 in that suit who is the appellant herein was “allowed to make construction over the ‘B’ schedule property strictly adhering to the sanctioned plan being BR No. 40/A/E.B-III/16 dated 24.11.2016 sanctioned on 03.11.2017. The order of injunction dated 29.07.2015 is hereby modified to the extent under Order 39 Rule 4 of CPC.”

Learned Advocates submitted that the sanctioned plan that exists in favour of the appellant, permits him to raise construction of a G+2 building. In as far as the second floor is concerned, there is a deviation of approximately 186 sq. mtrs. from the sanctioned plan. The third and fourth floors are completely without sanction. These allegations are strongly denied and disputed by learned Advocate for the appellant.

We have considered the rival contentions of the parties. We have noted that a civil suit is pending to which the appellant herein as also the writ petitioners are parties. The writ petitioners are plaintiffs in such suit. They have claimed certain declaratory reliefs and consequential injunction orders. HMC is a party defendant to that suit. The civil suit notwithstanding, in our view, there is no order of the learned Civil Court or of any competent forum restraining HMC from carrying its statutory duties in accordance with law.

As the learned Judge has noted, HMC submitted before His Lordship, that having found unauthorized construction, HMC issued a show cause notice to the

appellant herein. The learned Judge directed HMC to proceed with the show cause notice. In our opinion, the learned Judge rightly passed such direction. No extent of civil dispute between the parties can stand in the way of HMC discharging its duties under the Howrah Municipal Corporation Act, 1980. If there is unauthorized construction, the same must go. Illegal construction has become a bane of the society. Such constructions must be dealt with firmly.

We endorse the view of the learned Single Judge that HMC shall follow up the show cause notice in question. We are surprised that although the learned Judge's order was passed way back in February, 2020, and there is no stay or any other order in the appeal, HMC has not acted in terms of the learned Judge's order.

Be that as it may, HMC shall now proceed with the show cause notice in accordance with law and if it is found that there is, indeed, unauthorized construction, the same must be demolished. Needless to say, principles of natural justice will be observed to the fullest extent. In other words, all concerned parties including the writ petitioner, the appellant herein or any other person who may be responsible for such construction, will be given sufficient opportunity of hearing.

At this stage, Mr. Banerjee, learned Advocate, representing the HMC says that all concerned parties were heard and an order of self-demolition dated September 13, 2022, has been passed by HMC requiring the person

responsible to demolish the unauthorized portion of the building in question. A copy of such order is placed on record. Since such order is there, the Corporation should enforce the same in accordance with law subject to interdiction by any competent forum.

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

The appeal and the connected application are, accordingly, disposed of.

Urgent photostat certified copy of this order be supplied to the parties, if applied for, as early as possible.

(Arijit Banerjee, J.)

(Apurba Sinha Ray, J.)