

08.05.2023
Item No.05
Court No.6.
S. De

**M.A.T. 555 of 2023
with
I.A. No. CAN/1/2023**

**Rajesh Jaiswal & Anr.
Vs
Howrah Municipal Corporation & Ors.**

Ms. Shebatee Datta,
Ms. Poulami Roy,
...for the appellants.
Mr. Sanjib Seth,
..for the respondent no.6.
Mr. Susanta Pal,
Mr. Prabir Kumar Ray,
...for the State.
Mr. Sandipan Banerjee,
Mr. Ankit Sureka,
Mr. Sobhan Majumder,
...for the H.M.C.

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

A judgment and order dated March 21, 2023, whereby the writ petition of the appellants being WPA 23266 of 2022 was disposed of, is assailed before us in this appeal.

It appears that on a complaint lodged by the private respondent herein, a demolition order was issued by Howrah Municipal Corporation (in short H.M.C.), calling upon the appellants herein to remove certain unauthorized constructions. It is the further case of the appellants that upon acceptance of

retention fees, some of the unauthorized constructions were permitted to be retained.

Before the learned Single Judge, a report dated March 21, 2023, was filed by the Assistant Engineer in-charge, Building Department, H.M.C. That was a report prepared pursuant to a joint inspection conducted on March 20, 2023, wherein the appellants participated. The said report mentions that the parties are directed to cause self demolition of the unauthorized area within fifteen days from the date of receipt of the order; in default, H.M.C. will cause demolition and recover the cost thereof from the concerned party. The learned Judge disposed of the writ petition with the following observations :

“The report dated 21st March, 2023 has been circulated amongst the parties in Court today.

The parties are directed to act in accordance with the direction passed by the Howrah Municipal Corporation.

The portions, which the petitioner Rajesh Jaiswal has been permitted to be retained shall, however, not be required to be demolished. Rajesh Jaiswal will be obliged to produce documents showing that the Corporation permitted retention. In the absence of proper evidence permitting retention, the parties will not be entitled to claim retention.”

Being aggrieved, the writ petitioners are before us by way of this appeal.

Learned advocate for the appellants says on instruction that on the day of joint inspection, no measurement was undertaken by the Corporation Officers. She further says that her clients are ready, willing and prepared to remove the unauthorized construction so long as the Corporation identifies such unauthorized construction with sufficient particulars. As of date, it is not clear, after allowing for retention of certain portion of the unauthorized construction, which portions are required to be demolished.

Mr. Banerjee, learned advocate appearing for H.M.C., candidly says that without segregating the portion that requires to be demolished from the portion that has been allowed to be retained, the Corporation Officers cannot carry out the demolition activity.

Hence, it is clarified that first of all, the H.M.C. shall identify with adequate precision the portion of the unauthorized construction that is required to be demolished. Once that is done, the appellants will have three weeks to carry out the self-demolition. In default of the appellants demolishing the identified unauthorized construction, H.M.C. shall carry out the demolition activity at the cost of the appellants. H.M.C. shall specify the portions that the appellants

are required to demolish and communicate the same to the appellants within two weeks from date (May 22, 2023).

The learned Single Judge has already noted that in order to take benefit of retention of any portion of unauthorized construction, the appellants will have to produce documentary evidence of such permission having been granted by H.M.C. to them. We completely endorse that view.

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

Accordingly, MAT 555 of 2023 is disposed of along with the application being I.A. No. CAN 1 of 2023.

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.)