

24.04.2023
Item No.04
Court No.6.
S. De

**M.A.T. 602 of 2023
with
I.A. No. CAN/1/2023**

**Sultan Khan.
Vs
The Bally Municipality & Ors.**

Mr. Supriyo Chattopadhyay,
Mr. Sudip Kr. Maity,
...for the appellant.

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

Mr. Debasis Sur,
Mr. Goutam Debnath,
...for the respondent no.5.

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

An order of demolition dated June 28, 2022, issued by the Bally Municipality has been challenged by the appellant herein before the learned Single Judge by way of a writ petition being WPA 28971 of 2022. Another writ petition being WPA 23214 of 2022 is also pending before the learned Single Judge, at the instance of the persons on the basis of whose complaint the demolition order was passed, for implementation of the demolition order.

The learned Judge has passed an order on March 22, 2023, which is impugned in this appeal.

The two writ petitions are pending before the learned Judge and have been directed to be listed again on April 26, 2023.

It was contended by the present appellant before the learned Single Judge that the appellant is the developer of the premises in question. The demolition order was passed without affording an opportunity of hearing to the present appellant. The owners have entered into a development agreement with the present appellant.

The learned Judge, in the order under challenge in this appeal, observed inter alia as follows :-

“The structure in question being constructed without any sanction plan is liable to be demolished in accordance with the direction passed by the Bally Municipality.

As Sultan Khan has admittedly accepted responsibility for railing construction without any permission, accordingly, the said Sultan Khan is directed to take steps for demolition of the subject structure positively by 13th April, 2023.

In the event Sultan Khan fails to demolish the said structure within the time limit stipulated hereinabove, Bally Municipality shall take steps for demolition of the same and recover the costs for

demolition from the said Sultan Khan.

Bally Municipality on 29th November, 2022 has already assessed the cost of demolition at Rs. 8,72,240/- only. Bally Municipality has submitted that till the aforesaid cost is deposited in the office of the Municipality, it will not be possible for the Municipality to take steps for demolition of the unauthorized structure.

The structure in question in that event shall remain attached with the Bally Municipality.

The bank statement of Sultan Khan in the State Bank of India, Liluah Branch updated on 13th February, 2023 filed in Court be retained with the records.

The Inspector-in-Charge, Belur P.S. directed to cause an enquiry to find out the other bank details of Sultan Khan, son of Nabiullah Khan of 143, Girish Ghosh Road and also 15/2, Jaya Bibi Road, P.O. Ghusuri, Howrah to ascertain from where the money was spent for raising construction and as to whether the aforesaid amount of Rs.8,72,240/- is available in his bank account. It will be open for the police to verify the Income Tax Return details filed by Sultan Khan to enquire about his financial stability.

Till the aforesaid amount is deposited by Sultan Khan before the Bally Municipality, the Municipality shall not permit the aforesaid Sultan Khan to continue any construction work within its municipal area.”

We have heard learned counsel for the appellant and learned counsel for the Municipality. The writ petitioners in WPA 23214 of 2022 have not yet been served and, therefore, they are not represented. However, we do not propose to defer the hearing in this matter in view of the order that we are inclined to pass.

It is fairly established that there is no sanctioned plan for the impugned construction. Hence, we are not inclined to interfere with the order under appeal. We find no apparent infirmity in the impugned order. We further see that the development agreement on the basis whereof this appellant is claiming an interest in respect of the impugned property, is dated November 4, 2022. In other words, such argument was executed much after the order of demolition was passed by the Municipality.

Learned advocate appearing for the appellant says that only one opportunity of hearing should be given to the appellant by the Municipality before the demolition order is implemented. Since the matter is

pending before the learned Single Judge, we are not inclined to pass any such order. It will be open to the appellant to make such a prayer before the learned Single Judge who is requested to consider such prayer in the manner the learned Judge deems fit and proper.

Learned advocate for the appellant further submits that the portion of the order directing the Inspector-in-Charge, Belur Police Station to investigate and find out other bank details of the appellant, is beyond the scope of the writ petition and the same should be recalled. Again, since the writ petition is pending, the appellant will be at liberty to make such prayer before the learned Judge who is requested to consider the same in accordance with law.

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 602 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.)