

3.
10-05-2023
debajyoti
(Ct. no.06)

MAT 637 of 2023
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IA NO:CAN/1/2023

Sri Promod Kumar Shaw & Ors.
Vs.
The Howrah Municipal Corporation & Ors.

Mr. Tanmoy Mukherjee,
Mr. Souvik Das,
Mr. K. R. Ahmed,
Mr. Rudranil Das

... For the Appellants.

Mr. Sandipan Banerjee,
Mr. Ankit Sureka,
Mr. Sobhan Majumder

... For H.M.C.

Mr. Banerjee, learned advocate, representing Howrah Municipal Corporation, files a report dated May 03, 2023, signed by the Assistant Engineer In Charge, Building Department, Howrah Municipal Corporation. Let the report be retained with the records.

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

The order dated September 30, 2022 that was passed in the earlier round of litigation, i.e., in WPA 19528 of 2022 required the respondent no.2 in that writ petition, i.e., the Assistant Engineer In Charge, or his delegate to consider and dispose of the representation made by the writ petitioner therein in accordance with law, after giving an opportunity of hearing to all necessary parties. The present appellants were respondents in that writ petition.

Mr. Banerjee, learned advocate, representing the Corporation, on instructions, fairly submits that after

the order dated September 30, 2022, was passed, no opportunity of hearing was given to the present appellants. Hearing was given to the appellants prior to that order being passed.

Earlier hearings may not be relevant since the order dated September 30, 2022, which has attained finality, not having been challenged before a higher forum, required a further hearing to be given to the concerned parties including the present appellants.

In view of the aforesaid, without entering the merits of the case, we set aside the order under appeal. The Corporation shall give a fresh opportunity of hearing to the present appellants and other concerned parties and shall take a fresh decision as regards whether or not the present appellants have made unauthorized construction. If necessary, fresh inspection of the impugned construction may be taken in the presence of all concerned. Naturally, the decision of the competent officer in the Corporation will be supported by reasons. If the Corporation comes to the conclusion that the impugned construction is unauthorized, it may take steps for removal of such construction in accordance with law.

Needless to say, till a fresh decision is taken by the Corporation in accordance with the above direction, no coercive action be taken in respect of the impugned construction.

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

Affidavits not having been called for, the allegations in the injunction petition, shall be deemed not to have been admitted by the respondents.

All parties shall act on server copies of this order duly downloaded from the official *website* of this Court.

Urgent photostat certified copies of this order, if applied for, be supplied to the parties on compliance of all necessary formalities.

(Apurba Sinha Ray, J.) (Arijit Banerjee, J.)