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02-05-2023
debajyoti
(Ct. no.06)

MAT 691 of 2023
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IA NO:CAN/1/2023
+
CAN/2/2023

Md. Makhdoom Reza @ Maqdoom Reza & Anr.
Vs.
Smt. Uma Devi Prasad & Ors.

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

... For the Appellants.

Mr. Jitesh Sah,
Mr. Ranjeet Prasad

... For Respondent No.1.

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

... For H.M.C.

Re : CAN/2/2023

This is an application for leave to prefer appeal against an order dated March 23, 2023, passed in CPAN 206 of 2022. The applicants are not parties to the contempt proceedings. Hence, this application for leave to prefer appeal on the ground that the order passed in the contempt application vitally affects them.

The order passed is one for demolition of unauthorized structure. The applicants claim to be owners of such structures. Hence, the applicants are affected by the order passed.

Leave is granted to the applicants to prefer appeal against the order dated March 23, 2023. CAN 2 of 2023 is, thus, allowed.

Re : MAT/691/2023 & CAN/1/2023

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

The respondent no.1 in this appeal had approached a learned Judge of this Court by filing WPA 12312 of 2021, alleging unauthorized construction on the part of the present appellants, who were made parties to the writ petition. By an order dated September 23, 2021, the said writ petition was disposed of by the learned Judge with the following directions:-

“ Under such circumstances, the writ petition is disposed of with a direction upon the competent authority of the Howrah Municipal Corporation to cause an inspection of the premises in question in presence of the parties. Copies of the report of the inspection shall be supplied to the respective parties. A hearing shall be given and a reasoned order shall be passed and communicated to all concerned.

It goes without saying that the Corporation shall act and proceed in accordance with law on the basis of what transpires at the inspection and at the hearing.

This Court has not gone into the merits of the claims and counter-claims of the parties and the Corporation shall act and proceed in compliance of the statutory provisions.

The entire exercise shall be completed within a period of four months from date of communication of this order.

It is also made clear that the Corporation shall implement such interim measures as may be necessary to ensure that further unauthorized construction does not take place. ”

It appears that without adhering to the directions contained in the aforesaid order, Howrah Municipal Corporation passed an order of demolition of the structures raised by the present appellants. That order of demolition was carried to the Writ Court by the present appellants by filing WPA 5533 of 2022. By an order dated March 30, 2022, the learned Judge observed that the order impugned in the writ petition has been issued on a misconception that the Court had directed demolition. Before passing any demolition order, the Corporation is bound to afford an opportunity of hearing to the person responsible. Rules of natural justice must be observed. The Corporation had erred in issuing demolition order straightaway without complying with the directions in the earlier order dated September 23, 2021. The learned Judge set aside the demolition order and remanded the matter for a *de novo* consideration, with the direction that the complaint of unauthorized construction shall be decided afresh. The learned Judge laid down detailed procedure which was to be followed by the Corporation in deciding the complaint of unauthorized construction. The learned Judge stipulated a period of three months for completion of the entire exercise.

It appears that subsequently, the respondent no.1 in this appeal, filed a contempt application for alleged violation of the order dated September 23, 2021, passed in the earlier writ petition. On such contempt application, the learned Single Judge has passed the

order dated March 23, 2023, which is impugned in this appeal. The order reads as follows:-

“ Having perused the report of the Assistant Engineer-in-Charge, Building Department, Howrah Municipal Corporation, it appears to the Court that partial compliance of the order of this Court has been effected. It is sated that if further demolition takes place and the entire building is broken down, the adjacent buildings will suffer damage and chances of accidents would increase. It also appears that the decision of the corporation that was passed pursuant to an order of this Court had been challenged before a learned coordinate Bench. The learned Judge also directed demolition.

Accordingly, it is submitted that three attempts were made to demolish the structure with police help. Mr. Banerjee submits that repeated nuisance have also been committed by the persons responsible for such unauthorized construction. According to Mr. Banerjee, May 3, 2023 is the next date for further demolition of the existing structure. Some portion of the structure is also occupied.

Occupation of the structures by third parties cannot be a ground for not demolishing the unauthorized construction. Thus, the construction shall be demolished to the extent that the adjacent buildings are not damaged. Preserving the unauthorized construction only because some persons are residing inside, cannot be allowed.

It is expected that the corporation shall approach the police authorities for adequate police support immediately, so that the inmates can be made to vacate the premises peacefully before the next date of demolition. The construction will be demolished by taking into account the safety and security of the adjacent buildings and the people who are residing in and around the area. The corporation and the police authorities shall fix a

schedule as to how the entire process shall be carried on.

The allegation of contempt will be decided on the next date.

Let the matter appear on May 11, 2023. ”

Learned advocate, appearing for the appellants, says that no contempt proceeding would lie for alleged violation of the order dated September 23, 2021. The said order in effect merged with the subsequent order dated March 30, 2022. If the respondent no.1 herein, who is the petitioner in the pending contempt application, is aggrieved by non-implementation of any order of this Court, he may take appropriate action, but he cannot maintain a contempt application for alleged violation of the earlier order dated September 23, 2021, which has lost any independent force.

Learned advocate for the respondent no.1 submits that no interference should be made with the order under appeal. All the impugned structures are unauthorized. They should be demolished.

We are also of the firm opinion that no unauthorized construction can be allowed to stand. The same must be demolished. We understand from the submission made by the learned advocates that pursuant to the second order dated March 30, 2022, proceedings took place before the Competent Authority of Howrah Municipal Corporation and a final order has been passed for demolition of the unauthorized constructions. We have no doubt in our mind that such demolition order must be implemented subject to any interdiction by a competent forum. However, in our considered view, such order for demolition ought

not to have been passed in a contempt application alleging violation of the earlier order dated September 23, 2021, which really has lost its independent existence. Pursuant to the said order, an order of demolition was passed by the Corporation. That order, therefore, stood worked out, albeit in an improper manner. The learned Judge set aside the demolition order, rightly so, and directed fresh consideration and disposal of the complaint of unauthorized construction by the order dated March 30, 2022, in the manner indicated in that order. In our view, that second order now holds the field and the earlier order dated September 23, 2021, has spent its force.

Hence, we set aside the order under appeal. This will not prevent anybody concerned from taking out appropriate application for violation, if any, of the order dated March 30, 2022, in accordance with law.

This order in no manner should be construed as putting any stamp of approval on any unauthorized construction made by the appellants herein. We have intervened only on a technical point of law. If and when the learned Judge is approached with a proper application for implementation of the demolition order, we request the learned Judge to pass appropriate orders, as Her Ladyship may deem fit and proper.

Although we have set aside the order under appeal on technical grounds, we have in no manner put any fetter on the Corporation to carry out the necessary demolition work. The demolition order issued by the Corporation pursuant to the learned Single Judge's order dated March 30, 2022, has not been interfered with by a competent forum. The

Corporation not only has the liberty, but is under statutory duty to execute such demolition order, subject to interdiction by a competent forum. Mr. Banerjee, learned advocate for the Corporation, says that on the basis of the order impugned in this appeal, notice was issued by the Corporation fixing tomorrow (May 03, 2023) as the date for demolition. Now since the appeal has succeeded, fresh notice will have to be issued. Let that be done. We make it doubly clear that we are not in any manner standing in the way of the Corporation carrying out its demolition order in accordance with law.

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

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

All parties shall act on the 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.)