

03. 12.05.2023
Court No.6
Tanmoy Ghosh

MAT 771 of 2023

**Sultan Khan
-Versus-
The Bally Municipality & Ors.**

**With
IA No: CAN/1/2023**

Mr. Debabrata Saha Roy, Adv.,
Mr. Tapan Sarkar, Adv.
...for the appellant.

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

Mr. Subhasish Pachhal, Adv.
...for the respondent no.4.

Affidavit of service filed in Court today, be kept with the records.

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

An order dated April 28, 2023, *interim* in nature in the sense that the two writ petitions in connection with which the order has been passed, are still pending before the learned Single Judge, is the subject-matter of challenge in this appeal.

It appears that the Bally Municipality passed an order for demolition of the structures at premises no. 144, Girish Ghosh Road, P.S. Belur, Howrah – 711207, as according to the Municipality, the structures were unauthorized and there was no sanctioned plan in respect thereof. The

present appellant has filed WPA 28971 of 2022, challenging the order of demolition. Prior thereto, the complainants, at whose instance the demolition order was passed, had filed WPA 23214 of 2022 for implementation of the order of demolition.

On March 22, 2023, an order was passed by the learned Single Judge on the two writ petitions, the relevant portion whereof reads as follows:-

“As Sultan Khan has admittedly accepted responsibility for raising 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 is 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.”

The said order was carried in appeal by the present appellant by filing MAT 602 of 2023. In that appeal, it was submitted on behalf of the present appellant that he should be given an opportunity of hearing by the Municipality before the demolition order is implemented. The appeal and the connected application were disposed of by this Bench by an order dated April 24, 2023, the operative portion whereof reads as follows:-

“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.”

It appears that subsequently the two writ petitions appeared before the learned Single Judge on April 26, 2023. On that date, the learned Single Judge recorded an order which reads as follows:-

“I have perused the order passed by the Hon’ble Division Bench on 24th April, 2023 in MAT 602 of 2023 with IA. CAN 1 of 2023.

It appears that the Hon’ble Division Bench granted liberty to the appellant (Sultan Khan) to make a prayer before this Bench to consider the request for granting one opportunity of hearing to the appellant by the Municipality before implementation of the order of demolition.

It appears that Sultan Khan relies upon a development agreement in respect of the property executed in November 2022 after the order of demolition was passed.

Admittedly, the construction in question has been raised without obtaining any sanction plan.

The construction is a G+4 storied structure.

Bally Municipality is unable to execute the order of demolition as the person responsible for making construction has not deposited the demolition cost.

It has been pleaded by the learned advocate for the Bally Municipality that the said municipality has been formed very recently after bifurcation from the Howrah Municipal Corporation and the municipality does not have the necessary infrastructure and the funds to execute the order of demolition. A cost of Rs.8,72,240/- has been assessed by the Municipality as demolition cost.

The Court requests Mr. Sandipan Banerjee, learned advocate who usually represents Howrah Municipal Corporation before this Court to take instruction as to whether the Howrah Municipal Corporation can execute the order of demolition with the infrastructure which the Howrah Municipal Corporation has.

Let the matter appear in the list on 28th April, 2023 at the top marked ‘To Be Mentioned’. Mr. Banerjee shall come ready with necessary instruction on the adjourned date.”

The writ petitions were again listed before the learned Single Judge on April 28, 2023. The learned Judge passed an order on that date, the relevant portion whereof reads as follows:-

“The Court is of the opinion that for ends of justice and to spread a positive message to the society that wrong doing always does not pay and the authorities cannot always be manipulated

for illegal gain, the Howrah Municipal Corporation be directed to conduct the demolition work.

The Commissioner, Howrah Municipal Corporation is, accordingly, directed to provide the services of the demolition squad for demolishing the structure constructed unauthorisedly at 144, Girish Ghosh Road, Ghusuri, Howrah.

The Commissioner of Police, Howrah Police Commiserate is directed to render all necessary help and assistance to the men and agents of the Howrah Municipal Corporation at the time of conducting the demolition work.

The engineers of the Bally Municipality shall be present at the time of conducting the demolition work.

The Bally Municipality and the Howrah Municipal Corporation shall mutually decide and fix up a date of demolition and intimate the same to the Commissioner, Howrah Police Commisionerate for providing adequate police force at the time of conducting the demolition work.

The demolition shall be conducted at the earliest but positively by May 17, 2023.

List on May 19, 2023.”

Being aggrieved by the order dated April 28, 2023, the writ petitioner in WPA 28971 of 2022 has come up by way of this appeal.

Learned senior Counsel representing the appellant says that the appellant's grievance is that in spite of noticing the observation of the Division Bench in the order dated April 24, 2023, the learned Judge did not record any reason as to why an opportunity of hearing should not be given to the present appellant. The other grievance made is that the prayer of the present appellant that the portion of the order dated March 22, 2023, directing the Inspector-in-Charge, Belur Police Station to investigate and find out other Bank details of the appellant, has not been deleted in spite of prayer being made for the same.

Insofar as the second grievance is concerned, we are unable to entertain the same. It does not even appear from the order under appeal or from the order dated April 26, 2023 that a prayer to that effect was made. We will have to go by the text of the order and not the pleadings of parties.

Insofar as the first grievance is concerned, the learned Judge clearly noticed the observation of the Division Bench that the prayer to afford the present appellant an opportunity of hearing prior to implementation of the demolition order should be made before the learned Single Judge. There was no direction or request from the Division Bench that the prayer must necessarily be allowed. The learned Judge clearly considered the observation of the Division Bench and deemed it fit and proper in the facts and circumstances of the case, not to allow any opportunity of hearing to the appellant. We see no infirmity in the order impugned in that regard or even in the order dated April 26, 2023.

However, we called upon learned Advocate for the appellant to produce anything before us which would show that the appellant has any right, title or interest in respect of the impugned structures. Nothing could be produced to our satisfaction. Hence, we are not persuaded that the appellant is even an interested person.

We find no reason to interfere with the order under appeal. Unauthorized constructions must be demolished. Such illegal constructions have become a bane of the

society. Persons, who recklessly raise construction without obtaining requisite sanction, must be dealt with sternly. Such people do not deserve any sympathy or indulgence.

Since we have not called for affidavits, the allegations in the stay petition shall be deemed not to have been admitted by the respondents.

The appeal being MAT 771 of 2023 and the connected application being IA No: CAN/1/2023 are accordingly dismissed.

Let urgent photostat certified copy of this order, if applied for, be made available to the parties upon compliance with all requisite formalities.

(Apurba Sinha Ray, J.)

(Arijit Banerjee, J.)