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08-06-2023
debajyoti
(Ct. no.06)

MAT 808 of 2023
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IA NO:CAN/1/2023

Mrs. A. K. Augustine & Anr.
Vs.
Howrah Municipal Corporation & Ors.

Mr. Sardar Amjad Ali, Sr. Adv.,
Mr. Anirban Ghosh
... For the Appellants.

Mr. Sandipan Banerjee,
Mr. Ankit Sureka,
Mr. Sobhan Majumder
... For 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 April 21, 2023, whereby the writ petition of the appellants being WPA 2986 of 2023 was disposed of, is assailed in this appeal by the writ petitioners.

It appears that the appellants/writ petitioners are in occupation of two flats on the third floor of a building situate at 44/1, Ram Charan Sett Road, Howrah. The appellants claim to be in occupation of the flats for more than 20 years when they were put in possession by the land owners/developer. They say that completely unauthorized construction has been made on the ground floor of the building. Car parking space has been converted into commercial space. Therefore, there has also been a change of user. They approached the learned Single Judge with a prayer for a direction on the Corporation to remove the unauthorized construction on the ground floor.

The learned Judge noted that a representation has been made by the writ petitioners to the Corporation to the effect that the illegal construction on the ground floor should be removed and certain deviation from the sanctioned plan that has been found in respect of the flats in occupation of the writ petitioners, should be regularized. Such request for regularization was made in view of the fact that not only the flats were mutated in favour of the writ petitioners long time back, assessment has also been made in respect of such flats and the writ petitioners are paying Property Tax regularly as per the bills raised by the Corporation.

The learned Judge disposed of the writ petition by making the following observations:-

- “ 6. This Court is surprised as to why the HMC has not taken aggressive steps to demolish the unauthorised construction for over twenty years now. The petitioners and the other flat owners on the premises are not only guilty of committing illegality but have also been enjoying the same for the last 20 years.
7. The petitioners and other flat owners have not taken any step against the promoter till date. They are, thus, parties to the illegality.
8. The HMC may take immediate and urgent steps in accordance with law.
9. The aforesaid order shall not prevent the petitioners from approaching the HMC under the Act for any remedies available in law.”

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

We have heard learned counsel for the parties. Mr. Ali, learned Senior Advocate, representing the appellants, has fairly stated that the Corporation should consider the request of the appellants to regularize the deviations in respect of the flats under the occupation of the appellants, in accordance with law. As regards the unauthorized construction on the ground floor of the concerned building as also the change of user, Mr. Ali has said that the Court may issue necessary direction, as the Court may deem fit and proper.

We are *ad idem* with the learned Single Judge that the Corporation must take necessary steps for removal of the unauthorized construction, if any, on the ground floor of the building in question. We hope that the Corporation takes such steps expeditiously, as no unauthorized construction should ordinarily be allowed to stand.

However, insofar as the portion of unauthorized construction in respect of the two flats under the occupation of the appellants is concerned, we grant liberty to the appellants to make a fresh comprehensive representation/application to the Corporation for regularization of the unauthorized portion of the two flats. If such application is made within two weeks from date, the Competent Officer in the Corporation will consider the same in accordance with law and the applicable rules and regulations and shall dispose of the same by a reasoned order within a period of eight weeks from the date of receipt of the application, after giving an opportunity of hearing to the appellants or their authorized representative and any other interested party,

as the officer may deem fit and necessary. The concerned officer of the Corporation will be at liberty to take inspection of the concerned flats of the appellants and the appellants shall render full cooperation to the Corporation's officer in that regard.

We make it clear that we have not gone into the merits of the case at all. We are not binding the hands of the Corporation to decide the representation of the appellants in any particular manner. The application shall be decided in accordance with law. Needless to say, if the application for regularization is disallowed, cogent reasons will be recorded for the same.

Till a decision is taken on the application for regularization that may be filed by the appellants within the time period indicated hereinbefore, no coercive measure shall be taken by the Corporation in respect of the flats under the occupation of the appellants.

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

Affidavits not having been called for, the allegations in the application for appropriate orders shall be deemed not to have been admitted by the respondents.

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

(Arijit Banerjee, J.)

(Apurba Sinha Ray, J.)