

17.05.2023
Item No.06
Court No.6.
S. De

**M.A.T. 860 of 2023
with
I.A. No. CAN/1/2023**

**Soumitra Mukherjee.
Vs
The Howrah Municipal Corporation & Ors.**

Mr. Nilanjan Bhattacharyya,
Mr. Arpan Guha,
Mr. Abhilash Chatterjee,
Mr. Saikat Dey,
...for the appellant.

Mr. Tanmoy Mukerjee,
Mr. Souvik Das,
Mr. R.R. Ahmed,
Mr. Rudranil Das,
...for the respondent no.6/writ petitioner.
Mr. Sandipan Banerjee,
Mr. Ankit Sureka,
Mr. Sobhan Majumder,
...for the 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 17, 2023, whereby the writ petition of the respondent no.6 was disposed of, is under challenge in this appeal.

The writ petitioner approached the learned Single Judge seeking implementation of an order of demolition passed by the Howrah Municipal Corporation in respect of a building constructed by the appellant herein at premises no.5/8/2, Kali Prasad Chakraborty Lane, Post Office-Kadamtala, Police

Station-Bantra, Ward No.23, Howrah-711 101. The allegation was that a substantial portion of the construction was without any sanctioned plan. It was submitted on behalf of the Corporation that a self-demolition notice had been issued on February 22, 2023 and the file is presently pending at the end of the demolition squad.

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

“As it appears that the structure in question is suffering a self-demolition order and the person responsible failed to act in accordance with the said order, accordingly, the Howrah Municipal is directed to take steps for implementation of the same in accordance with the law, at the earliest.”

Being aggrieved, the respondent no.6 in the writ petition has come up by way of this appeal.

It appears that the appellant herein filed a writ petition being WPA 5939 of 2022 challenging the order of demolition, in as much as the statutory appellate forum is not available. The writ petition was dismissed for default on February 6, 2023. The

application for restoration of the writ petition is pending.

Mr. Bhattacharyya, learned advocate appearing for the appellant further says that the appellant has made an application along with an as-made application to the Corporation for regularization of the impugned construction.

Mr. Mukherjee, learned advocate appearing for the writ petitioner points out that such application for regularization was made after the impugned order was passed by the learned Single Judge.

Be that as it may, we are of the view that it will really not prejudice any party if the Commissioner considers and disposes of the application for regularization made by the appellant herein in accordance with law and the relevant regulations.

The third proviso to Section 177 of the Howrah Municipal Corporation Act, 1980 reads as follows :-

“Provided also that the Commissioner may by order, on such terms and conditions and on payment of such fees as may be prescribed by regulations, regularize the minor unauthorized erection, or execution of any minor work without sanction under this Act, or minor deviation from the

*sanctioned plan or execution of
any minor erection or work in
contravention of any sanctioned
plan under this Act or the rules or
the regulations made thereunder,
as the case may be :”*

Mr. Mukherjee, learned advocate appearing for the writ petitioner says that no regulations as contemplated in the said proviso have yet been framed and as such there is no guideline according to which the Commissioner may exercise his power of regularization. Mr. Bhattacharyya, learned advocate appearing for the appellant disputes such contention.

Be that as it may, let the Commissioner take a reasoned decision on the application of the appellant for regularization of the impugned construction after affording opportunity of hearing to the appellant, the writ petitioner, any other concerned party and/or their authorized representative. The Commissioner shall decide the application himself and not delegate his function to any other officer. The entire exercise shall be completed within a fortnight from the date of communication of this order to the Commissioner by either of the parties. This time period is peremptory. In the event, the Commissioner rejects the appellant's application for regularization, naturally the

Corporation shall immediately proceed to implement the demolition order in question.

We have not gone into the issue of whether or not the appellant's construction is capable of being regularized. The Commissioner is requested to take an independent decision in accordance with law. Needless to say, till a decision is taken by the Commissioner in terms of this order, no coercive action be taken by the respondents in respect of the impugned construction.

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 860 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.

(Arijit Banerjee, J.)

(Apurba Sinha Ray, J.)