

D/L
Item No 18
19.06.2023
KOLE

**FMA 191 of 2022
With
IA No. CAN 1 of 2021**

**Shibaji Roy & Anr.
-Vs.-
The Howrah Municipal Corporation & Ors.**

*Mr. Biswanath Chatterjee,
Mr. Sobham Kr. Pathak,*

...for the appellants.

*Mr. Sandipan Banerjee,
Mr. A. Sureka,
Mr. S. Majumder,*

...for the HMC.

Ms. Saheli Sen,

...for the respondent nos. 6 and 7.

The supplementary affidavits filed in court today be kept with the records.

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

A judgment and order dated May 10, 2018, whereby the writ petition of the appellants being WP No. 27504 (W) of 2017 was disposed of, is assailed in this appeal.

The case of the appellants/writ petitioners is that they had approached the learned Single Judge praying for a direction upon Howrah Municipal Corporation (HMC) to demolish the alleged illegal construction made at Premises No. 216, Sree Ram Dhang Road, Salkia, Howrah.

The order impugned, however, records that the writ petitioners sought demolition of unauthorized construction at premises no. 215, Sree Ram Dhang Road, Salkia, Howrah. The learned Judge took note of the fact that a civil suit

instituted by the writ petitioner no. 2, concerning premises no. 15, is pending before the 5th Civil Judge, Junior Division, Howrah. The learned Judge noted the reliefs claimed in such suit which included declaration of various legal rights and consequential injunctions. The learned Judge disposed of the writ petition with the following observations:-

“In view of the second petition, putting the issue of unauthorized construction before such Civil Court in such Title Suit, it would be inappropriate for a Writ Court to intervene in the same subject.

Learned advocate for the respondent nos. 6 and 7 submits that, the respondent no. 5 has encroached upon the property belonging to her client. It is open to the parties to take appropriate steps before the appropriate forum in accordance with law.”

Being aggrieved, the writ petitioners have come up by way of this appeal.

Learned Advocate for the appellant says that the civil suit is in respect of premises no. 215, Sree Ram Dhang Road, Salkia, Howrah, where the appellants reside. Demolition is sought for in respect of unauthorized construction at premises no. 216, Sree Ram Dhang Road, Salkia, Howrah, which has no connection with the pending civil suit. There appears to be an error apparent on the fact of the order.

From the writ petition which has been placed before us and the prayers therein, it is clear that the grievance of the writ petitioners is in respect of unauthorized construction at premises no. 216, Sree Ram Dhang Road, Salkia, Howrah,

Accordingly, we set aside the order under appeal and remand the matter back to the learned Single Judge having determination to hear the writ petition and decide the same

afresh. The appellants shall be at liberty to urge all points that are available to them in law before the learned Single Judge.

Since we have not called for affidavits, the allegations made in the stay application are deemed not to be admitted by the respondents.

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

Urgent photostat certified copy of this order be supplied to the parties, if applied for, as early as possible.

(Arijit Banerjee, J.)

(Apurba Sinha Ray, J.)