

D/L
Item No 07
14.06.2023
KOLE

**MAT 975 of 2023
With
IA No. CAN 1 of 2023
With
IA No. CAN 2 of 2023**

**Avijit Sarkar
-Vs.-
Jaba Chandra & Ors.**

*Mr. Prantik Ghosh,
Mr. Prasad Bhattacharyya,
Mr. B. Das,*

...for the appellant.

*Mr. Subir Sanyal,
Ms. S. Sarkar,
Mr. S Roy Chowdhury,*

...for the respondent no. 1.

*Mr. N. C. Bihani,
Mrs. P. B. Bihani,
Mr. S. Ghosh,*

...for SDDM.

In Re: CAN 1 of 2023 in MAT 975 of 2023

This is an application for condonation of delay of 128 days in filing the appeal as noted by the Additional Stamp Reporter.

Causes shown being sufficient, we condone the delay.

CAN No. 1 of 2023 is, thus, allowed.

In Re: MAT 975 of 2023 with CAN 2 of 2023

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

A judgment and order dated December 12, 2022, whereby the writ petition of the respondent no. 1 herein being WPA No. 11682 of 2020, was dismissed by a learned Single Judge is under challenge in this appeal filed at the

instance of one of the private respondents in the writ petition.

The writ petitioner alleged before the learned Single Judge that the private respondents in the writ petition had made unauthorized construction without obtaining requisite sanctioned plan from the permission granting authority. It was submitted that on an earlier occasion, on the complaint filed by the writ petitioner, an order of demolition was passed by the Municipality in the year 2016. The challenge of the private respondents to such demolition order before a learned Single Judge and thereafter before a Division Bench of this Court failed. The demolition order was executed. However, the writ petitioner submitted that the private respondents have again raised illegal construction without leaving mandatory open space. The learned Judge noted that a representation made by the writ petitioner in August, 2020, to the Municipality, is pending consideration. The learned Judge disposed of the writ petition with the following observations:-

“As it appears that the representation filed by the petitioner alleging illegal construction is pending consideration since August 2020 accordingly, the present writ petition is disposed of by directing the Board of Councillors, South Dum Dum Municipality to cause a spot inspection upon prior notice to the parties to ascertain as to whether any unauthorized construction being made by the private respondents.

In the event it is found that construction has again been made after demolition of the earlier construction, then necessary steps shall be taken to deal with the same in accordance with law.

It will be open for the Municipality to recover the cost of demolition from the person responsible.

The Municipality shall ensure that the entire exercise is conducted at the earliest, but positively within a period of twelve weeks from the date of communication of a copy of this order.”

Being aggrieved, one of the private respondents in the writ petition has come up by way of this appeal.

Learned Advocate for the appellant fairly submits that the private respondents, in spite of having received notice of the writ petition, were not represented before the learned Single Judge. He candidly says that he cannot explain or justify the absence of the private respondents before the learned Single Judge. However, all that the appellant is praying for is that a hearing should be granted to the appellant by the Board of Councillors of the Municipality and the appellant should be allowed to rely on certain documents at such hearing before any demolition order is passed against the appellant.

We are of the view that such prayer is reasonable. The principles of natural justice also warrant that all concerned parties be granted an opportunity of hearing by the authority before any demolition order is passed by the Municipality.

Accordingly, we modify the order of the learned Single Judge only to the extent that prior to passing any demolition order against the appellant, the Board of Councillors of the Municipality shall grant an opportunity of hearing to the appellant, the writ petitioner and any other

concerned party as the Board may deem necessary and the Board will, thereafter, take a reasoned decision in accordance with law and the applicable rules and regulations after giving an opportunity of hearing to the appellant, the writ petitioner and all concerned parties. The entire exercise shall be completed within a period of 12 weeks from the date of communication of a copy of this order by the appellant or the writ petitioner to the Board of Councillors. It is made clear that the parties including the appellant and the writ petitioner will be at liberty to produce and rely on documentary evidence before the Board of Councillors.

We clarify that we have not gone into the merits of the case. It is up to the Board of Councillors to take a reasoned decision in accordance with law observing the principles of natural justice.

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.)

(Rai Chattopadhyay, J.)