

10 & 11.
21-06-2023
debajyoti
(Ct. no.06)

MAT 1002 of 2023
+
IA NO:CAN/1/2023

with

MAT 999 of 2023
+
IA NO:CAN/1/2023

Sri Purushottam Chowrasia
Vs.
Howrah Municipal Corporation & Ors.

Mr. Pinaki Ranjan Mitra,,
Mr. Jaydip Basu,
Mr. Tapas Chatterjee
... For the Appellant in both appeals.

Mr. Sandipan Banerjee,
Mr. Ankit Sureka,
Mr. Sobhan Majumder
... For Howrah Municipal Corporation
in both appeals.

Mr. Pradeep Kumar
... For Respondent No.5 in both appeals.

The appellant in both the appeals is directed to
forthwith cure the defect, as pointed out by the
Additional Stamp Reporter.

By consent of the parties, the appeals and the
applications are taken up together for hearing.

These appeals are directed against a judgment
and order dated April 17, 2023, whereby two writ
petitions were disposed of.

WPA 4949 of 2023 was filed by Anand Kumar
Singh seeking demolition of alleged unauthorized
construction made by Purushottam Chowrasia at

premises no.22, Bijay Kumar Mukherjee Road, P.O. Salkia, Golabari, under the jurisdiction of Howrah Municipal Corporation (HMC).

WPA 6570 of 2023 was filed by Purushottam Chowrasia for a direction on HMC to consider his representation dated March 06, 2023, wherein he has contended that the deviation complained of, is minor in nature and should be regularized.

It appears that HMC filed an inspection report before the learned Single Judge from which it appeared that the extent of deviation is approximately 232.374 sq. meters. The learned Judge observed that when the total sanctioned area in all the floors is 285.411 sq. meters and the total deviated area is 232.374 sq. meters, the extent of deviation is massive and there is hardly any provision to regularize the same. The learned Judge held that the prayer of the person responsible for regularizing the deviated portion of the impugned construction cannot be allowed. The learned Judge dismissed Purushottam's writ petition and disposed of Anand's writ petition by directing HMC to take steps for implementation of the order of demolition in accordance with law, at the earliest.

Being aggrieved, Purushottam is before us by way of these appeals.

It appears that Purushottam's representation dated March 06, 2023, is still pending and has not been decided by the competent officer in HMC. Without doing so, the demolition order has been passed on April 17, 2023. This may not have been proper. We are also of the view that it would have

been better if the learned Single Judge had directed HMC to first dispose of Purushottam’s representation dated March 06, 2023, before implementation of the demolition order.

Accordingly, we modify the order of the learned Single Judge to the extent that prior to implementation of the demolition order, the Assistant Engineer, Borough-II, HMC, shall pass a reasoned order on Purushottam’s representation dated March 06, 2023, in accordance with law and the applicable building rules, by July 21, 2023, after affording an opportunity of hearing to Purushottam and Anand or their authorized representative.

To avoid unnecessary delay, we fix the hearing before the Assistant Engineer, Borough-II, HMC, on July 14, 2023 at 12-00 noon, as suggested by learned advocates for all the parties. No adjournment shall be sought for by any of the parties before the Assistant Engineer, Borough-II, HMC. This order will be treated as notice of the hearing.

We make it clear that we have not gone into the merits of the case in the sense that we express no opinion as to whether or not the deviation complained of is capable of being regularized. We further clarify that in the event the Assistant Engineer, Borough-II, HMC, is of the view that the concerned construction is incapable of being regularized, the demolition order will be implemented in accordance with law.

Needless to say that no coercive action will be taken in respect of the impugned construction till a decision is taken by the Assistant Engineer, Borough-

II, HMC, and the same is communicated to the appellant.

Both the appeals and the connected applications are, accordingly, disposed of.

Affidavits not having been called for, the allegations in the stay petitions 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.)