

09.06.2023
Item No.03
Court No.6.
S. De

M.A.T. 1022 of 2023
with
I.A. No. CAN/1/2023
I.A. No. CAN/2/2023

Abhishek Roy & Ors.
Vs
State of West Bengal & Ors.

Mr. Raj Dip Ray,
Mr. Krishnendu Sarkar,
Mr. Gautam Dinda,
Ms. Mousumee Shome,
Mr. Sandip Ray,
...for the appellants.
Mr. Sirsanya Bandopadhyay,
Mr. Tirthankar Dey,
Mr. Arka Kr. Nag,
...for the B.M.C.
Mr. Prantick Ghosh,
Mr. Prasad Bhattacharyya,
Mr. Bitan Das,
...for the private respondent.
Mr. Lalit Mohan Mahata, Ld. A.G.P.,
Mr. P.B. Mahata,
...for the State.

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

In re : I.A. No. CAN/2/2023

The applicants were not parties to the writ petition. They say that the judgment and order dated May 17, 2023, passed by the learned Single Judge on the writ petition which is still pending, adversely affects their rights. The order is for demolition of a temple which, the appellants say, stands there for

about 100 years. The appellants are local residents. They say that all the people of the locality offer their puja in that temple. They say that the temple is not causing any inconvenience to anybody. The order of demolition should be recalled/set aside.

Having heard learned counsel for the applicants, we are of the view that the applicants may have something to say regarding the order sought to be impugned. Leave to appeal is granted.

I.A. No.2 of 2023 is, accordingly, disposed of.

In re: MAT 1022 of 2023 & I.A. No. CAN/1/2023

It appears that the respondent/writ petitioner approached the learned Single Judge with the grievance that the impugned construction has been raised unauthorizedly. No sanctioned plan for the construction which happens to be a temple, could be produced. The learned Judge observed that since there is no sanctioned plan, Bidhannagar Municipal Corporation (in short 'BMC') is duty-bound to remove such unauthorized construction. The learned Judge directed that the impugned structure shall be removed positively by June 11, 2022. The learned Judge has also directed the writ petition to be listed on June 19, 2023.

Heard learned counsel for the parties. It is true that no construction without the permission of the competent authority can be allowed to stand.

However, the appellants say that the construction in question which is a temple, has been there for about 100 years. This is disputed by learned advocate for the respondent/writ petitioner. The appellants say that the sentiment of the local residents should be considered by the authorities. They further say that before demolition is effected, the authorities should grant an opportunity of hearing to the local residents.

We are of the view that it will not prejudice anybody if an opportunity of hearing is granted to an authorized representative of Dud Pukur Shiv Mandir which is the temple in question.

Accordingly we direct the Commissioner of BMC, being the respondent no.4 herein to consider the representation dated May 2, 2023 (copy whereof is annexure 'B' to the stay petition), in accordance with law, and dispose of the same by a reasoned order within a period of four weeks from the date of receipt of a copy of this order along with the copy of the representation dated May 2, 2023, after affording an opportunity of hearing to the authorized representative of the temple in question and also to the writ petitioner and/or his authorized representative. We make it clear that we do not bind the hands of the respondent no.4 in any manner. He is free to take such decision as the law and the Building Rules and Regulations warrant. In the event, the respondent no.4 is not

satisfied that the construction in question can be allowed to stand, he will be at liberty to take appropriate steps for its removal in accordance with law within a period of four weeks from the date of passing of the decision of the respondent no.4.

No useful purpose would be served by either keeping the appeal or the writ petition pending.

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 1022 of 2023 is disposed of along with the application being I.A. No. CAN 1 of 2023. WPA 23133 of 2019 is also disposed of.

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.)