

02. 24.07.2023
Court No.6
Tanmoy Ghosh

MAT 1309 of 2023

**Paresh Bag & Anr.
-Versus-
Haran Bag & Ors.**

**With
IA No: CAN/1/2023
With
IA No: CAN/2/2023**

Mr. Santanu Mukherjee, Adv.
...for the appellants.

Ms. Pampa Dey (Dhabal), Adv.
...for the respondent nos. 1 & 2/
writ petitioners.

Affidavit of service filed in Court today be kept
with the records.

In Re: IA No: CAN/1/2023

Although this application has been filed for
condonation of delay in filing the appeal, as per the
noting of the Stamp Reporter, there is no delay. The
application being IA No: CAN/1/2023 is accordingly
disposed of.

**In Re: MAT 1309 of 2023
With
IA No: CAN/2/2023**

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

This appeal is directed against a judgment and
order dated June 14, 2023, whereby the writ petition of

the respondent nos. 1 and 2 herein, being WPA 2748 of 2023, was disposed of.

The writ petitioners approached the learned Single Judge with the grievance that although the Maheshtala Municipality had passed a demolition order requiring the private respondents in the writ petition to remove the unauthorized construction, the Municipality has taken no steps for implementing such demolition order.

The learned Judge noted that on two earlier occasions, the demolition order was sought to be executed but by reason of resistance and non-availability of adequate Police force, the order could not be carried out. The learned Judge observed that it is high-time that the demolition order is implemented. Accordingly, the learned Judge disposed of the writ petition with the following directions:-

“The Municipality is, accordingly, directed to execute the order of demolition positively by July 31, 2023.

The Officer-in-Charge, Maheshtala Police Station is directed to render all necessary assistance to the men and agents of the Maheshtala Municipality at the time of execution of the order of demolition. If required, the Officer-in-Charge, Maheshtala Police Station may seek additional police force from the superior authority for implementation of the order of demolition.

The private respondents are directed to take immediate steps for vacating the subject premises as the same is an unauthorized construction suffering an order of demolition.”

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

Learned Advocate for the appellants says that as noted by the learned Single Judge, he was not sufficiently prepared to argue the matter before the learned Judge on the day the writ petition was disposed of. The learned Judge ought to have adjourned the matter. His clients were served with only a notice of the writ petition but no copy of the writ petition was served on them.

To our query as to whether or not the impugned construction has been raised in accordance with a sanctioned Building Plan, learned Advocate for the appellants candidly submitted that as per his instruction there is no sanctioned plan. The building was constructed 30/35 years ago. Nobody ever raised any objection regarding the building.

The building may have been constructed long back. The fact remains that there is no Building Plan sanctioned by any Competent Authority, following which the building was put up. The building from its very inception is unauthorized. Passage of time, however, long, cannot transform an illegal building to a legal one.

The learned Judge committed no error in directing the Municipality to implement the demolition order. We see no reason to interfere with the order under appeal. Accordingly, the appeal being MAT 1309 of 2023 along with the connected application being IA No: CAN/2/2023 stands dismissed.

Since we have not called for affidavits, the allegations in the stay petition shall be deemed not to have been admitted by the respondents.

However, needless to say that the appellants herein will be at liberty to challenge the demolition order before the appropriate forum, in accordance with law, if they are so advised.

Let urgent photostat certified copy of this order, if applied for, be made available to the parties upon compliance with all requisite formalities.

(Arijit Banerjee, J.)

(Apurba Sinha Ray, J.)