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31-08-2023
(Ct. no.06)
debajyoti

**IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
APPELLATE SIDE**

**MAT 1319 of 2023
+
IA NO:CAN/2/2023**

**Kiran Debi Shaw @ Kiran Debi & Anr.
Vs.
The State of West Bengal & Ors.**

Mr. Tanmoy Mukherjee,
Mr. Samrat Choudhury,
Mr. Anit Dey

... For the Appellants.

Mr. Priyankar Saha,
Mr. Debangshu Dinda

... For the State.

Mr. Koustav Chandra Das,
Mr. Debnath Mahata

... For the Municipality.

Mr. Shuvro P. Lahiri,
Ms. Tithi Mazumder,
Mr. Rajesh Naskar

... For Respondent Nos.5 & 6.

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

This appeal is directed against a judgment and order dated January 14, 2022, whereby a writ petition filed by the respondent nos.5 and 6 herein, was disposed of. The present appellants were respondent nos.5 and 6 in the writ petition.

In the writ petition, the petitioners had prayed for an order directing Naihati Municipality to implement an order of demolition dated December 01, 2021, issued by that Municipality, in respect of alleged unauthorized construction put up by the

appellants herein. The learned Judge disposed of the writ petition with the following directions:-

“ As the municipal authorities have already passed an order of demolition dated December 1, 2021 and the respondent nos.5 and 6 have been asked to demolish the unauthorized constructions pursuant to the hearing held on October 30, 2021, nothing remains to be decided in the writ petition.

The Naihati Municipality shall act and proceed in accordance with law on the basis of the order of demolition, unless the said order is stayed or reversed by a superior forum. A copy of the demolition order is taken on record.

The entire exercise shall be carried out by the municipality within a period of four months from the date of communication of this order. ”

Being aggrieved, the respondent nos. 5 and 6 in the writ petition have come up by way of this appeal.

We have heard learned advocate for the parties at length. We see that the present appellants herein had approached a learned Single Judge challenging the order of demolition dated December 01, 2021, by filing WPA 15924 of 2023. The learned Judge did not interfere with the demolition order. The learned Judge noted that a contempt proceeding is pending before the learned Judge, who passed the order dated January 14, 2022 (which is the subject matter of the present appeal) for alleged violation of that order. The learned Judge disposed of that writ petition with the following observations:-

“ As it appears that the Municipality is taking steps in

compliance of the direction passed by the Court, accordingly, this Bench refrains from exercising jurisdiction in the matter.

It will be open for the petitioners to make necessary submission before the Hon'ble Bench taking up the contempt matter. ”

Therefore, it appears that the present appellants' challenge to the demolition order dated December 01, 2021 failed before a learned Single Judge of this Court. That order has not been carried before any higher forum.

Since the challenge thrown to the demolition order by the appellants has failed before a learned Judge of this Court, we see no reason to interfere with the order impugned in this appeal, which merely directs implementation of that demolition order dated December 01, 2021.

Learned advocate for the appellants says that the Municipality has already removed the unauthorized construction and as of now, there is no unauthorized construction. This is seriously disputed by learned advocate for the respondents/writ petitioners.

Learned advocate for the appellants refers to the report filed by the Municipality in support of his submission that as of now, no unauthorized construction is there at the instance of the appellants. Learned advocate for the writ petitioners seriously disputes the correctness of the report.

Be that as it may, we have already opined that we see no reason to interfere with the order impugned. The Municipality will naturally be at

liberty to make appropriate submission in the contempt application.

The appeal and the connected application are dismissed.

All parties shall act on the server copies of this order duly downloaded from the official *website* of this Court.

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.)