

D/L
Item No. 02
21.08.2023
KOLE

**MAT 1321 of 2023
With
IA CAN 1 of 2023**

**Sanjib Kumar Mazumder
-Vs.-
The Commissioner, Howrah Municipal
Corporation & Ors.**

*Mr. Anindya Bose,
Mr. D. Mondal,*

...for the appellant.

*Mr. Sandipan Banerjee,
Mr. Ankit Sureka,
Mr. S. Majumder,*

...for the HMC.

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

This appeal is directed against a judgment and order dated June 26, 2023, whereby the appellant's writ petition being WPA 6891 of 2023 was disposed of by a learned Single Judge of this Court.

The appellant approached the learned Single Judge with the grievance that a vat has been constructed by the private respondent, which is an Ashram, in front of the appellant's house. The private respondent denied having set up the vat. Learned Advocate for the Howrah Municipal Corporation (in short 'the Corporation') submitted before the learned Judge that the vat in question is regularly cleared and there is no accumulation of rubbish in that vat. It was further submitted that the vat cannot be removed unless a suitable alternative place is identified for the same.

The learned Judge disposed of the writ petition with the following observations and directions:-

“It appears from the report forwarded by the concerned department of the Howrah Municipal Corporation that the place for shifting the vat at an alternative accommodation is yet to be identified.

Accordingly, there is no scope for passing any direction upon the Corporation to remove or shift the vat.

The only way the grievance of the petitioner can be redressed is to pass a direction upon the Corporation to ensure that the vat is regularly cleared so that no foul smell emanates from the said place and the garbage is removed in frequent periods several times a day. There should not be collection of filth and the vat should not act as breeding place of mosquitoes and other insects.

The concerned department of the Howrah Municipal Corporation is directed to take necessary steps in the matter to redress the grievance of the petitioner.”

Being aggrieved the writ petitioner has come up by way of this appeal.

Learned Advocate for the writ petitioner/appellant draws our attention to a reply dated August 22, 2013, by the Corporation in response to an application made by the appellant under the Right to Information Act, 2005. The material portion of the said reply reads as follows:-

“The vat, as per record, has not constructed by the HMC. Engineering Department has forwarded the complaint with proposal for demolition to the higher authority for decision.”

Learned Advocate says that way back in 2013, the Corporation had decided to demolish the vat in question but no action was taken thereafter.

We have also heard Mr. Banerjee, learned Advocate for the Corporation. Mr. Banerjee suggests that the matter may be referred to the Commissioner of the Corporation to

take an informed decision. We think it is a good suggestion. Learned Advocate for the appellant also agrees.

Accordingly, we permit the appellant/writ petitioner to make a fresh comprehensive representation to the Commissioner of the Corporation with supporting documents, within a fortnight from date. If such representation is made, the Commissioner being the respondent no. 1 herein, or any competent officer authorized by him, shall take a reasoned decision in the matter, in accordance with law, within a period of four weeks from the date of receipt of the representation, after giving an opportunity of hearing to the appellant or his authorized representative and any other concerned party. In the event, the Commissioner or his delegate finds that the vat has been illegally constructed, prompt steps will be taken in accordance with law. The order of the learned Single Judge is modified to the above extent.

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.)

(Apurba Sinha Ray, J.)