

3.
08-08-2023
debajyoti
(Ct. no.06)

MAT 1329 of 2023
+
IA NO:CAN/1/2023

Sk. Nurul
Vs.
Sanwar Chopder & Ors.

Mr. Rudranil De
... For the Appellant.

Mr. Priyankar Saha,
Ms. Srijani Mukherjee
... For the State.

Mr. Gopal Chandra Das
... For Respondent Nos.3,
4, 6, 7 & 8.

Original certified copy of the impugned order
filed in Court today be kept with the records.

Affidavit-of-Service filed in Court today is taken
on record. In spite of service, nobody appears for the
respondent/writ petitioner.

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

The writ petitioner had approached the learned
Single Judge alleging that the appellant herein, who
was the private respondent in the writ petition, has
made unauthorized construction. The learned Judge
had called for a report from Tamralipta Municipality.
From the report that was filed, the learned Judge
observed that upon a physical inspection, the
Municipality had found that the private respondent in
the writ petition (present appellant) has constructed a
cantilever at the first floor level without taking due
sanction from the Municipality. This cantilever

portion is on the west side of the building over the tile shed of the petitioner's building. It was also mentioned in the report that the disputed part of the building is situated on vested land.

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

“ As it appears from the report that unauthorized construction has indeed been detected, accordingly the Municipality is directed to take steps to deal with such unauthorized construction in accordance with law, after giving reasonable opportunity of hearing to all the necessary parties and pass necessary order and communicate the same to the parties.

Steps shall be taken in the matter at the earliest but positively within a period of twelve weeks from the date of communication of a copy of this order. ”

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

Learned advocate for the appellant says that the inspection that was conducted by the Municipality was not upon notice to the appellant, who, therefore, could not be present. The inspection report that was filed before the learned Judge does not record the factual scenario correctly. Further, the appellant has made an application to the Municipality for regularization of the alleged unauthorized construction, which is of a minor nature. According to learned advocate, the application for regularization will, in all probability, be allowed.

Having heard learned counsel for the parties, including, Mr. Das for the Municipality and Mr. Saha

for the State, we feel that ends of justice will be served if we pass the following order.

We direct the Municipality to conduct a joint inspection of the alleged unauthorized construction, in the presence of both the appellant and the writ petitioner or their authorized representative. Such inspection shall be held upon adequate prior notice to the parties hereto. After spot inspection, the Chairman of the Municipality shall afford an opportunity of hearing to both the appellant herein and the writ petitioner, and then take a reasoned decision in the matter, in accordance with law and the applicable rules/regulations, if any, within a period of eight weeks from the date of communication of this order to the Chairman of the Municipality. We also direct the Chairman of the Municipality to dispose of the appellant's application for regularization of the impugned construction simultaneously with the issue of unauthorized construction, as raised by the writ petitioner. Needless to say, if the appellant's application for regularization is allowed, the question of further action in respect of the impugned construction will not arise. If the appellant's application for regularization is rejected, and the Municipality finds that there is illegal construction, the same shall be dealt with by the Municipality in accordance with law.

The order of the learned Single Judge stands modified to the above extent. The appeal and the connected application are, accordingly, disposed of.

Affidavits not having been called for, the allegations in the stay application shall be deemed not to have been admitted by the respondents.

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.)