

13.09.2023
Item No.03
Court No.6.
S. De

M.A.T. 1370 of 2023
With
I.A. No. CAN/1/2023

Trilochan Das.
Vs
The State of West Bengal & Ors.

Mr. Saptansu Basu, Ld. Sr. Adv.,
Mr. Chiranjib Sinha,
Mr. Dyutiman Banerjee,
...for the appellant.

Mr. Amal Kr. Sen, Ld. A.G.P.,
Ms. Sahina Sumi,
...for the State.

Mr. Sandipan Banerjee,
Mr. Ankit Sureka,
Mr. Sobhan Majumder,
...for the H.M.C.

Mr. Animesh Paul,
Ms. Sneha Sharma,
...for the respondent no.8.

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

On July 27, 2023, when this appeal was admitted the following order was passed :-

“It appears that the appellant/writ petitioner constructed a residential building after obtaining a sanctioned Building Plan from Howrah Municipal Corporation (in short ‘HMC’). The private respondent made a complaint to HMC that the appellant has constructed the building in deviation from the sanctioned plan and has also made structures which are

beyond the sanctioned plan. A demolition proceeding was initiated. We are told that sometime in June 2022, HMC passed a demolition order directing the appellant to remove the unauthorized portion of the structure in question.

Challenging such demolition order, the appellant approached the learned Single Judge by way of the present writ petition which was dismissed by the learned Single Judge. The learned Judge observed that the Assistant Engineer, OSD & Officer-in-Charge, Borough-VII, is the delegatee of the Commissioner of the HMC and is the Competent Authority to pass the order of demolition. The learned Judge directed the writ petitioner/appellant to vacate the portions constructed unauthorizedly and permit the men and officials of HMC to proceed with the work of demolition. The learned Judge also permitted HMC to obtain Police help, if necessary.

Being aggrieved, the writ petitioner is before us by way of this appeal.

Mr. Basu, learned Senior Advocate representing the appellant, says that the building has been constructed for the appellant and his family to reside therein. It is not a commercial venture. He fairly admits that there are deviations from the sanctioned plan. He, however, says that if such unauthorized portion is demolished by HMC, the entire structure will collapse. He only prays for a little

time to consult expert Engineers to find out if the unauthorized portion can be removed without affecting the entire building.

Learned Advocate for HMC says that HMC is under a direction of the learned Single Judge to demolish the unauthorized portion.

Learned advocate for the private respondent says that the first demolition order was passed sometime in 2021. The present appellant persuaded this Court, in an earlier round of litigation, to set aside such order since the same was devoid of reasons. A fresh order has been passed this time. Such order should not be interfered with.

Having heard learned Counsel for the parties and considering that the building in question is a residential one, we are inclined to grant a little time to the appellant to ascertain if the unauthorized portion of the structure can be demolished without adversely affecting the entire structure. Let this matter stand adjourned for two weeks and be listed again on August 10, 2023. On that date, Mr. Basu, learned Senior Advocate for the appellant, will come back with proper instruction.

We make it clear that if it is reported to us that the unauthorized portion can be removed without damaging the authorized portion of the construction, we will direct the appellant to remove the unauthorized

portion forthwith. If the report is that the unauthorized portion cannot be demolished without affecting the rest of the building, in that event we will have no choice but to direct the HMC to carry out the demolition work.

Let there be a stay of operation of the order under appeal for a period of three weeks from date (17.08.2023) or until further order, whichever is earlier.”

On August 21, 2023, a report of Shri Souvik Sasmal (Chartered Engineer) was filed by the appellant to the effect that the unauthorized portion of the building in question can be demolished without affecting the authorized portion. We had called for a report in the form of an affidavit from Howrah Municipal Corporation (in short 'HMC'), deleting with the report of Shri Sasmal. Such report of HMC was filed on September 4, 2023.

It appears before such report was signed by the Assistant Engineer, Borough-VII, HMC, the said engineer physically inspected the premises in question. The report is to the following effect :-

“That it appears from physical inspection at above premises the entire ground floor, 1st floor and part of 2nd floor of total building are supported by 11 numbers of R.C.C. pillar, out of which 10 numbers R.C.C pillar exists within the external deviated portions. All these R.C.C pillars and beams are having

load bearing capacity of the entire building and demolition of existing R.R.C pillars in deviated portions to all sides of this building may result collapse of entire building. The 2nd floor part unauthorized structure may be demolished without effecting of structural stability.”

It, therefore, appears that according to the concerned Assistant Engineer of HMC, the unauthorized construction on the second floor of the building in question can be removed without affecting the structural stability of the building as a whole. Let that be done by the HMC as expeditiously as possible and preferably within eight weeks from the date of communication of this order to the Assistant Engineer, Borough-VII, HMC.

Mr. Basu, learned senior advocate representing the appellant says that as per the report of Shri Sasmal, even the unauthorized construction on the first floor can be removed without affecting the authorized portion of the building provided additional pillars are constructed with adequate load bearing capacity with the sanction of HMC to replace the 10 numbers of RCC pillars that have been unauthorizedly constructed. Mr. Basu says that an application has been made by the appellant to HMC for such permission. If such an application has been made, the Corporation shall take a decision thereon within eight

weeks from the date of communication of this order after affording an opportunity of hearing to the appellant herein, the private respondent herein and any other party that the authorities may deem fit and proper.

Learned advocate for the private respondent submits that no indulgence should be shown to the appellant. The appellant made unauthorized construction defying stop work notice. The entire unauthorized construction should be demolished, whatever the consequences be.

As regards the said submission, we are of the opinion that if the authorized portion of a building can be saved by removing the unauthorized portion in an appropriate manner, the same ought to be permitted.

We make it clear that we are in no manner binding the hands of the HMC and the competent authority in HMC will be at liberty to take an appropriate decision in accordance with law and the applicable rules and regulations. In the event, the proposal of the appellant is found to be technically feasible or otherwise acceptable to the competent authority in HMC, appropriate orders may be passed in accordance with law. If the proposal of the appellant is not found to be technically feasible or otherwise not acceptable, then HMC shall proceed to demolish the entire unauthorized portion

notwithstanding that the same may result in demolition of the authorized portion as well. This risk the appellant took while making unauthorized construction. In the event, demolition of the entire unauthorized portion becomes necessary, the same shall be completed within six weeks from the date of the decision taken by the competent authority in the HMC.

MAT 1370 of 2023 is disposed of along with the application being I.A. No. CAN 1 of 2023.

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.)