

4.
07-08-2023
debajyoti
(Ct. no.06)

MAT 1380 of 2023
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IA NO:CAN/1/2023

Subrata Goswami
Vs.
The Kamarhati Municipality & Ors.

Mr. Pratyush Patwari ... For the Appellant.

Mr. Sankha Subhra Ray ... For Kamarhati Municipality.

Mr. M. Rahman ... For Respondent No.4.

Affidavit-of-Service filed in Court today be taken
on record.

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

A judgment and order dated July 06, 2023,
whereby the appellant's writ petition was disposed of
by a learned Single Judge of this Court, is under
challenge in this appeal.

The appellant/writ petitioner and the private
respondent no.4 herein are brothers. They reside in
the same locality. The appellant approached the
learned Single Judge with the complaint that the
private respondent no.4 and/or his father has made
illegal construction on the first floor roof of the
subject premises, without obtaining sanction from the
Kamarhati Municipality. The further grievance of the
appellant/writ petitioner was that the private
respondent no.4 is commercially exploiting the
unauthorized construction by inducting the private
respondent no.5 herein, as a tenant. No prior

permission has been obtained by the private respondent no.4 for change of user of the premises from residential to commercial.

The private respondent no.4 submitted before the learned Single Judge that the ground and the first floor of the concerned premises were constructed after obtaining due sanction from the Municipality way back in the year 1973. A shed on the first floor roof has been constructed only for getting protection from elements of nature.

The learned Judge recorded the submission of learned advocate for the Municipality that for constructing a shed only, no permission is necessary.

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

“ Upon hearing the submissions made on behalf of the parties and upon perusal of the photographs of the subject structure produced before this Court, the allegation of unauthorized construction remains unsubstantiated.

As regards change of use of the rooms of the subject structure, it will be open for the petitioner to file appropriate objection before the concerned Municipal authority.

In the event such an objection is filed, the Municipality shall consider the same in accordance with law after giving reasonable opportunity of hearing to all the necessary parties.

The Municipality, however, will not enter into or decide any private dispute in between the parties. ”

The writ petitioner is aggrieved by the portion of the impugned order whereby the learned Single Judge

has opined that the allegation of unauthorized construction remains unsubstantiated.

We have heard learned counsel for the parties. The appellant says that it is not merely a shed that has been constructed on the first floor roof. Other structures have been constructed which are unauthorized. These allegations are strongly denied and disputed by learned advocate for the private respondent no.4. He also says that the private respondent no.4 has a duly sanctioned building plan for the concerned structure.

Having heard learned counsel for the parties, we are of the view that ends of justice will be served if we relegate the entire issue to the Municipality for consideration and decision in the matter.

Accordingly, we grant liberty to the appellant/writ petitioner to make a comprehensive representation ventilating his grievance, along with supported documents, if any, to the Board of Councillors of the Municipality, within a fortnight from date, with a copy of the representation and the supporting documents/annexures to the private respondent no.4. The private respondent no.4 will be at liberty to respond to such representation in writing within a fortnight of receipt of a copy of the appellant's representation. A copy of the response shall also be made available to the appellant. In case the Municipality relies on any document, copies thereof will be made available to the appellant as also the private respondent no.4 prior to the hearing.

The Board of Councillors of the Municipality shall hold a hearing on any date convenient to the Board, after four weeks from date with adequate prior

notice to the appellant and the private respondent no.4. The Board of Councillors shall take a reasoned decision in the matter, in accordance with law, within a period of four weeks after expiry of the initial four weeks granted to the parties for making representation and filing response thereto. The Board of Councillors will decide whether or not the private respondent no.4 has made any unauthorized construction. The Chairman of the Municipality will decide whether or not the private respondent no.4 has changed the user of any portion of the premises in question without obtaining prior permission of the Municipality. In the event the Board of Councillors/Chairperson finds that the private respondent no.4 has committed any illegality, appropriate remedial measures will be directed to be taken.

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.)