

08.08.2023
Item No.2.
Court No.6.
AB

M.A.T. 1386 of 2023
With
I A CAN 1 of 2023

Nasir Ali & Others
Vs
Sk. Imran & Others

Mr. Tanmoy Mukherjee,
Mr. Souvik Das,
Mr. Rudranil Das,
Ms. Utsa Dutta ...for the Appellants.

Mr. Sandipan Banerjee,
Mr. Ankit Sureka,
Mr. Sobhan Majumdar ...for the HMC.

Mr. Ujjwal Ray for the Respondents/
Writ Petitioners.

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

An order dated June 20, 2023, passed in WPA 8819 of 2016, being a writ petition filed by the respondent nos.1 to 3 herein, is under challenge in this appeal, at the instance of the private respondents in the writ petition. The writ petition is still pending before the learned Single Judge and has been made returnable on August 22, 2023.

In an earlier round of litigation, one Nikhat Parveen had approached the learned Single Judge by filing W.P. No.29605 (W) of 2014 alleging that the present appellants had raised unauthorized construction. The grievance of the writ petitioner in

that writ petition was that he had made a representation dated October 28, 2014, to the Mayor, Howrah Municipal Corporation. However, such representation was kept pending.

A learned Single Judge, by a judgment and order dated April 27, 2015, disposed of the writ petition with the following direction:

“In such view of it, there is no point in keeping the writ petition pending. The writ petition is disposed of by directing the Mayor, Howrah Municipal Corporation, i.e. the respondent no.3 herein, to consider and dispose of the representation dated October 28, 2014 within a period of six weeks from the date of communication of the order after giving the petitioner as well as the private respondents and any other person or persons as he may think it necessary, an opportunity of being heard. He shall also communicate the decision to the petitioner within a week after it is taken. In case, he find that the grievance of the petitioner is genuine he shall also pass necessary and consequential orders.”

It appears that instead of the Mayor of the Corporation considering the representation and passing an order, the Law Officer of the Corporation heard the parties and passed an order dated September 30, 2015, calling upon the present appellants to demolish certain unauthorized constructions.

Nothing happened for some time thereafter.

In 2016, the present writ petitioners approached the learned Single Judge by filing WPA 8819 of 2016 alleging non-implementation of the aforesaid demolition order. The learned Single Judge, by the

order impugned, has in effect directed implementation of the demolition order and has directed the concerned Police Authority to provide adequate police help for that purpose. Being aggrieved, the private respondents in the writ petition have come up by way of this appeal.

We have heard learned Counsel for the parties. Learned Advocate for the appellants says that the order dated April 27, 2015, passed by a learned Single Judge in W. P. No.29605 (W) of 2014 required the Mayor of the Howrah Municipal Corporation to consider and dispose of the writ petitioners' representation. However, the Law Officer of the Corporation heard the parties and passed a demolition order. This is not in compliance with the Court's earlier order. Learned Advocate further submitted that the Law Officer had no authority to pass the demolition order.

Mr. Banerjee, learned Advocate appearing for the Corporation, in his usual fairness, has left the matter to the Court. Mr. Roy, learned Advocate appearing for the writ petitioners, has also done the same.

We agree with Mr. Mukherjee, learned Advocate for the appellants, to the extent that the Mayor of the Corporation having been directed to dispose of the concerned representation, the Law Officer had no business to dispose of the representation by passing a demolition order. The Mayor himself was obliged to

dispose of the representation. Courts' orders must be strictly complied with. In the event the Mayor, upon application of mind, found that there was unauthorized construction, which required demolition but was of the opinion that only the Commissioner or his delegate can issue demolition order, the Mayor should have sent his finding to the Commissioner for issuance of demolition order. Under Section 28 of the Howrah Municipal Corporation Act, 1980, the Mayor can delegate his powers or functions only to the Deputy Mayor or to the Commissioner and not to any other officer or employee of the Corporation. However, in the instant case, since the Court specifically directed the Mayor to take a decision, there was no scope for delegation also. The demolition order passed by the Law Officer is clearly without jurisdiction and *non est* in the eye of law.

However, learned Advocate for the Corporation tells us that at least on 14 dates, demolition activities have been carried out. Substantial portion of the unauthorized construction has been demolished.

Be that as it may, no further effect can be given to the Law Officer's order dated September 30, 2015. The same is set aside.

The Commissioner of Howrah Municipal Corporation or his delegate is directed to revisit the issue of alleged unauthorized construction having been made by the appellants herein and pass a fresh

order, in accordance with law, as expeditiously as possible, after giving an opportunity of hearing to any one of the appellants or their authorized representative as also any one of the writ petitioners herein or their authorized representative. If the Commissioner or his delegate finds that in fact the impugned construction is unauthorized, the same shall be dealt with appropriately in accordance with law.

Mr. Mukherjee, learned Advocate for the appellants says that substantial portion of the property of the appellants has been demolished by implementing an illegal order and/or an order without jurisdiction and the appellants should be compensated by way of costs/damages by the respondents. This is not the appropriate forum for the appellants to make such claim. If the appellants are entitled to approach any other forum in accordance with law for such purpose, they will be at liberty to do so.

Since we have not called for affidavits, the allegations in the stay application are deemed not to be admitted by the respondents.

MAT 1386 of 2023 stands disposed of along with IA CAN 1 of 2023.

Learned Advocate for the parties say that no useful purpose will be served by keeping the writ petition pending. The writ petition being WPA 8819 of 2016 is disposed of, treating the same as on day's list.

Urgent photostat certified copy of this order, if applied for, be supplied expeditiously after compliance with all the necessary formalities.

(Arijit Banerjee, J.)

(Apurba Sinha Ray, J.)