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

MAT 1459 of 2023
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IA NO:CAN/1/2023
Sanyasi Naskar & Ors.
Vs.
Ajit Naskar & Ors.

Mr. Nilanjan Bhattacharjee,
Mr. Abhilash Chatterjee,
Mr. Saikat Dey
... For the Appellants.

Mr. Abu Abbas Uddin
... For Respondent No.1.

Mr. Sk. Md. Galib,
Mr. Anirban Datta
... For the State.

Ms. Mekhla Sinha,
Mrs. Malabika Roy Dey
... For Howrah Zilla Parishad.

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 25, 2023,
passed by a learned Single Judge of this Court in WPA
8486 of 2018, being a writ petition filed by the
respondent no.1 herein, is under challenge in this
appeal.

In effect, the learned Judge has directed
implementation of an order dated June 08, 2017,
issued by the Howrah Zilla Parishad, directing
demolition of certain allegedly illegal constructions

made by the private respondents in the writ petition, who are the appellants herein.

This is the third round of litigation. The first writ petition was filed by the respondent no.1 herein, alleging inaction on the part of the Howrah Zilla Parishad and not acting on the complaint of the writ petitioner therein to the effect that the present appellants had made unauthorized construction. That writ petition being WP No.27713(W) of 2016 was disposed of by an order dated April 10, 2017, with the following directions:

“ Considering the submissions as advanced by the learned Advocate appearing for the parties and after perusing the records, I direct the private respondent Nos.9 and 11 to 16 as a last chance to give reply to the show-cause notice dated 3rd November, 2016 issued by the District Engineer/Assistant Engineer, Howrah Zilla Parishad by 21st April, 2017. The Howrah Zilla Parishad after receiving such written reply to the show-cause notice dated 3rd November, 2016 from the private respondents will take a decision after giving an opportunity of hearing to the petitioner or his authorised representative and the private respondent Nos.9 and 11 to 16 or their authorised representative and thereafter communicate the decision to the parties within one week.

Needless to mention if it is found in the hearing that the private respondents have constructed unauthorised construction instead of repairing work of the existing construction then the Howrah Zilla Parishad is at liberty to take appropriate steps in accordance with law for demolition of such unauthorised construction.

Needless to mention further that to execute such demolition work, if any, the Zilla Parishad is at liberty to take

assistance of the Officer-in-Charge of the Liluah Police Station. ”

Pursuant to the aforesaid order, the Howrah Zilla Parishad held a hearing wherein all concerned parties participated and passed an order dated June 08, 2017, wherein it recorded that the present appellants had made unauthorized construction and, accordingly, the appellants were called upon to remove such construction. This order was challenged by the present appellants by filing a writ petition being W.P. No.16266(W) of 2017. By an order dated July 05, 2017, the writ petition was dismissed.

An appeal was carried from such order of dismissal being MAT 1278 of 2017. That appeal was disposed of by a coordinate Bench by an order dated October 23, 2017. The operative portion of the said order reads as follows:

“ In those circumstances, we feel that the appellants should be given a chance to urge this point before the District Engineer, Howrah Zilla Parishad, subject to the following observations: -

(a) The appellants cannot deny that the impugned construction is without sanction.

(b) If it is found by the said authority that the petitioners had no right whatsoever to make any construction on the property even if he had a sanctioned plan in his possession, then the question of regularisation of sanction under Regulation 15 would not arise at all. For example, if it is found that the petitioners have no title to the property or that the property is undivided and the other co-owners have not accorded consent to such construction or no construction can be made in the subject area for commercial purposes and so on.

(c) If the appellants overcome this hurdle then their case under Regulation 15 will be actively considered by the District Engineer.

This appeal is formally admitted.

The impugned judgment and order dated 5th July, 2017 is set aside.

The whole matter is remanded to the District Howrah Zilla Parishad to consider it afresh by passing a reasoned order in the light of our above observations, in accordance with law by giving an opportunity of hearing to the parties and allowing them an opportunity to produce evidence. The reasoned order should be communicated to the parties within 6 weeks from the date of service of the order on the Parishad. ”

It appears that after the aforesaid order of the coordinate Bench, a lot of water has flown. The present appellants claim that they have obtained conversion of the land from “danga” to “bastu”. The concerned Gram Panchayat has sanctioned an “as made” plan submitted by the appellants. The appellants, accordingly, claim that their construction, which may have been illegal initially, stands regularized and legalized. Documents in support of such submission have been annexed to the stay application filed in this appeal.

The aforesaid subsequent developments were not brought to the attention of the learned Single Judge. The learned Single Judge could not be properly assisted. The order of the learned Single Judge in the earlier round of litigation dismissing the writ application of the present appellants challenging the order of the Howrah Zilla Parishad dated June 08, 2017 was set aside by a Division Bench. By implication, in our view, the Howrah Zilla Parishad’s order dated June 08, 2017 also stands set aside. Hence, there can be no implementation of such order.

We are of the view that the aforesaid facts should be brought on record before the learned Single Judge and the writ petition should be decided thereafter.

Accordingly, we set aside the order under appeal and remand the matter back to the learned Single Judge having determination to hear the writ petition. The respondents in the writ petition will be at liberty to file Affidavit-in-Opposition within ten days from date. Reply thereto, if any, be filed within a week thereafter. The parties will be at liberty to mention the matter before the learned Single Judge after exchange of affidavits or after expiry of the time granted for filing affidavits. We have not decided anything on merits. We request the learned Single Judge to decide the writ petition upon exchange of affidavits.

Let no coercive steps be taken against the impugned construction till the learned Single Judge decides the writ application.

The appeal and the connected application are, accordingly, disposed of.

Affidavits not having been called for, the allegations made 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.)