

4.
14-08-2023
debajyoti
(Ct. no.06)

MAT 1515 of 2023
+
IA NO:CAN/1/2023

Kitu Das @ Swapan Das
Vs.

The Bansberia Municipality & Ors.

Mr. Jyoti Prakash Chatterjee
... For the Appellant.
Mr. Biplab Ranjan Bose
... For Bansberia Municipality.
Mr. Kajal Roy
... For Respondent No.8.

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

This appeal is directed against an order dated July 05, 2023, passed by a learned Single Judge in a writ petition filed by the respondent no.8 herein, being WPA 8174 of 2023. The appellant was the respondent no.8 in the writ petition.

The respondent no.8/writ petitioner approached the learned Single Judge with the case that the private respondent in the writ petition had made unauthorized construction on the concerned land, which belongs to the writ petitioner. The learned Judge noted that a civil court decreed Title Suit No.117 of 1999, filed by the writ petitioner against Bansberia Municipality and the persons, who are alleged to have made unauthorized construction. Although the learned Judge noted that the principal defendant in the suit was Bansberia Municipality, perhaps the same is not correct. From the judgment and decree of the learned Civil Judge, it appears that

Bansberia Municipality was the proforma defendant and the principal defendants were the present appellant and some of the other private respondents in the writ petition. The decree directed the principal defendant/present appellant “to remove the unauthorized structure and deliver vacant possession of the suit property to the plaintiff within sixty days hereof failing which the plaintiff will be at liberty to put the decree into execution in accordance with law”.

The learned Judge noted that there was no appeal from the said decree. The Municipality was not represented before the learned Judge on the day the impugned order was passed. Accordingly, the learned Judge passed the following order:

“ As it appears that there is already a decree passed by the competent Court directing removal of the unauthorized structure, accordingly, the Municipality is duty bound to comply the said direction.

The Chairman of the Municipality is accordingly directed to remove the unauthorized structure, description of which is appearing in the decree passed by the learned Court below.

Steps shall be taken in the matter at the earliest but positively within August 31, 2023.

The name of Mr. Tapan Das, the respondent no.9 stands expunged from the cause title of the writ petition.

List on September 6, 2023 to ascertain the compliance of the direction passed hereinabove.

Learned advocate for the petitioner is directed to forward a copy of the judgment and decree passed in Title Suit No.117 of 1999 to the aforesaid

respondent at the time of communicating the order of the Court. ”

Being aggrieved, the respondent no.8 in the writ petition has come up before us by way of this appeal.

We have heard learned counsel for the parties. Learned advocate for the appellant says that the appellant, who apparently was a defendant in the aforesaid suit, was never served with either writ of summons or any notice of application or any other kind of notice. Accordingly, the appellant or the other defendants being the principal defendants did not get an opportunity to contest the suit. The decree was passed *ex parte* insofar as the principal defendants including the present appellant are concerned. The allegation of non-service of writ of summons or notice of the proceedings before the learned Civil Judge, is strongly disputed by learned advocate for the writ petitioner.

Admittedly, the decree that was passed on March 30, 2007, in Title Suit No.117 of 1999, was never put in execution by the respondent no.8/writ petitioner herein, who was the plaintiff/decreed-holder in the aforesaid suit. The execution proceedings became time barred in 2019, i.e., after 12 years passed from the date of the judgment and decree. The decreed-holder approached the learned Single Judge this year after the execution of the decree became time barred by more than four years. Hence, no order can be passed for or in aid of execution of the decree. The order under appeal is, accordingly, set aside.

However, that does not mean that if any unauthorized construction has been made by the principal defendants in the aforesaid suit, including

the appellant herein, the same shall continue to be in existence.

Since a competent Civil Court has come to a finding that unauthorized construction has been made on the land in question, and such finding has attained finality, not having been assailed before any higher forum, it is the duty of the Municipality to remove the unauthorized construction upon notice to all concerned parties, in accordance with law, unless interdicted by any competent court of law. Such exercise shall be completed by the Municipality within six weeks from date.

Learned advocates for the parties say that no useful purpose will be served by keeping the writ petition pending. . Accordingly, the appeal being MAT 1515 of 2023, the connected application being CAN 1 of 2023 and the writ petition being WPA 8174 of 2023 are all disposed of, treating the writ petition as on the day's list.

Affidavits not having been called for, the allegations in the stay petition 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.)