

1.
04-09-2023
(Ct. no.06)
debajyoti

**IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
APPELLATE SIDE**

**MAT 1614 of 2023
+
IA NO:CAN/1/2023
+
CAN/2/2023**

**Sri Amitava Sengupta
Vs.
Smt. Smriti Sengupta & Ors.**

Mr. Arka Bhadra
... For the Appellant.

Mr. Somnath Ganguli, learned AGP,
Ms. Priyamvada Singh
... For the State.

Mr. Soumyajit Bhatta,
Mr. Sunayan Bose
... For Respondent Nos.3 & 4.

Affidavit-of-Service filed in Court today be taken on record. There is some doubt as to whether or not the private respondent herein has actually received notice of this appeal. However, in view of the nature of the order that we propose to pass, we are not inclined to defer hearing of this matter. The State and the Municipality are, however, represented.

CAN 1 of 2023 is an application for condonation of delay of 34 days in filing the appeal. Causes shown being sufficient, the delay is condoned.

The application being CAN 1 of 2023 is, thus, allowed.

Re : MAT/1614/2023 & CAN/2/2023

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

This appeal is directed against a judgment and order dated June 14, 2023, whereby the writ petition of the private respondent in this appeal, being WPA 2001 of 2023 was disposed of by a learned Single Judge of this Court.

It appears that the private respondent/writ petitioner approached the learned Single Judge with the grievance that Panihati Municipality, which had issued an order for demolition of alleged unauthorized construction raised by the appellant herein, has not fully implemented the demolition order. Only part demolition has been effected.

It appears that none of the respondents in the writ petition appeared before the learned Single Judge. The learned Judge disposed of the writ petition with the following observations and directions:-

“ As it appears that the order of demolition has been passed by the municipality, accordingly, the municipality ought to take steps to execute the same in accordance with law.

The municipality is directed to conclude the demolition process of the entire unauthorised construction at the earliest but positively within a period of ten weeks from the date of communication of this order. ”

Being aggrieved, the private respondent in the writ petition has come up by way of this appeal.

Learned advocate for the Municipality tells us that the demolition order dated September 08, 2021 was passed by the Executive Officer and at that time,

the Municipality was functioning under an Administrator. Prior to issuance of the demolition order, a stop work notice under Section 220 of the West Bengal Municipal Act, 1993, had been issued. Defying such notice, the appellant herein continued with illegal construction. Therefore, demolition order was issued. However, *de novo* proceedings have been initiated under Section 218 of the 1993 Act. The appellant is participating in such proceedings. Two hearings have been held. The private respondent/writ petitioner has not appeared in those proceedings. Order will be passed in the proceedings under Section 218 of the 1993 Act in due course.

Learned advocate for the appellant also says that his client has appeared before the Board of Councillors of the Municipality in the proceedings under Section 218 of the 1993 Act.

Since the Municipality has initiated and is proceeding with the matter under Section 218 of 1993 Act, we direct that no further demolition be effected till a final order is passed in the proceedings under Section 218 of the 1993 Act. Needless to say, if the final order is to the effect that the impugned construction is illegal and needs to be wholly removed, such order will be given effect to in accordance with law.

The order under appeal is set aside. The appeal and the connected application are, accordingly, disposed of.

Affidavits not having been called for, the allegations in the stay petition shall be deemed not to have been admitted by the respondents.

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.)