

18.09.2023
Item No.12.
Court No.6.
AB

**F.M.A. 1332 of 2022
With
I A CAN 2 of 2023**

**Srikanta Kumar Sinha
Vs
Sri Prasanta Kumar Sinha & Others**

Mr. M. P. Gupta,
Mr. Dilip Kumar Saila ...for the Appellant.

Mr. Debjit Mukherjee,
Ms. Rupsa Chakraborty ...for the State.

Mr. S. Chakraborty,
Mr. T. Ganguly,
Mr. A. Basufor the Respondent No.1.

Mr. Sandipan Banerjee,
Mr. Ankit Sureka,
Mr. Sobhan Majumdarfor the HMC.

This appeal is directed against a judgment and order dated September 6, 2022, whereby the writ petition of the respondent no.1 herein, being WPA 12090 of 2022, was disposed of by a learned Single Judge of this Court.

The material facts of the case were recorded by us in our order dated July 18, 2023, passed in this appeal. It may be helpful to reproduce the said order herein, for the sake of completeness of this order.

“It appears that a case was initiated against the appellant herein for unauthorized construction. Our attention has been drawn to page 54 of the stay application which is a copy of a hearing sheet recording the minutes of a hearing dated January 14, 2021 before the Borough Officer/Assistant Engineer of Howrah

Municipal Corporation. The appellant herein was heard and it appears that he admitted that some deviation from sanctioned plan took place at the time of construction.

On the basis of such admission, a self-demolition notice dated February 2, 2021 was issued by the Officer in Charge, Borough Committee-II, Howrah Municipal Corporation calling upon the appellant herein to demolish the unauthorized construction, failing which the Corporation would demolish the same at the cost of the appellant herein.

Alleging inaction on the part of the Howrah Municipal Corporation and that no step was taken by the Corporation for implementation of the self-demolition order referred to above, the respondent no. 1 in this appeal approached the learned Single Judge in the present round of litigation. It was submitted before the learned Single Judge on behalf of the appellant/respondent no. 6 that a civil suit at the instance of the writ petitioner is pending before the 4th Court of the Civil Judge (Junior Division) at Howrah being Title Suit No. 31 of 2021. It was pointed out that Howrah Municipal Corporation was defendant no. 2 in the said suit. It was submitted that the writ petitioner cannot proceed before two fora with the same cause of action.

The learned Judge, however, noted that the issues pending before the Civil Court pertain to encroachment. The writ petition concerns unauthorized construction. Accordingly, the learned Judge disposed of the writ petition by passing the following directions:-

“On a perusal of the said order of self-demolition, it appears that the details of the unauthorized construction is not mentioned therein but from the hearing-sheet that has been annexed to the writ petition containing the signature of the respondent No. 6 it appears that the respondent No. 6 admitted that there has been deviation at the time of making construction.

The order of demolition was passed way back in February 2021 but the same is yet to be implemented.

The Howrah Municipal Corporation is accordingly directed to implement the direction passed in the communication dated 2nd February, 2021 at the earliest, but positively within a period of twelve weeks from the date of communication of a copy of this order provided the same is not set aside/modified/varied by any Court of competent jurisdiction.”

Being aggrieved, the respondent no. 6 in the writ petition has come up by way of this appeal.

Mr. Gupta, Learned Advocate, appearing for the appellant says that apart from the fact that the writ petition ought not to have been entertained in view of the pendency of the civil suit, the self-demolition notice does not specify the nature or extent of deviation from the sanction plan. Hence, it is incapable of execution.

We are not impressed with the submission that the learned Single Judge ought not to have entertained the writ petition because a civil suit is pending between the parties. As it appears to us, the main issue in the civil suit is encroachment. That cannot prevent the Howrah Municipal Corporation from discharging its statutory duty to ensure that an illegal construction does not continue to be in existence.

However, we see some substance in the submission of Mr. Gupta that the self-demolition notice is vague in the sense that it does not contain sufficient particulars of the unauthorized construction.

Accordingly, we direct the Howrah Municipal Corporation through its competent officer to hold inspection of the building in question and file a report before us on the adjourned date indicating the nature and extent of unauthorized construction with sufficient particulars. Let such inspection be held on 25.07.2023 at 12 noon in the presence of the appellant and the writ petitioner herein. No further notice of such inspection will be served. This order will serve as such notice. The

appellant shall render full cooperation and help to the Corporation officers to carry out the local inspection of the property in question.

Mr. Gupta on instruction further submits that on June 9, 2023, the Corporation people had visited the property in question and demolished a portion of the property. If, in fact, that has happened, the Corporation shall also mention the same in its report to be filed on the adjourned date.

To avoid any untoward incident, the Officer in Charge of the Golabari Police Station is directed to deploy adequate police personnel at the locale in question on 25.07.2023 from 11.30 a.m. till the local inspection is over. The Officer in Charge of the Police Station will be responsible to ensure that there is no violence or breach of law and order in the area. It is made clear that apart from the appellant, the writ petitioner alone will be entitled to be present at the time of inspection by the Corporation officers.

List the matter once again on 31.07.2023.

The Officer in Charge of the Golabari Police Station and all parties are directed to act on the server copy of this order.

Since we are in the process of hearing out the matter, let no coercive action be taken in respect of the impugned construction till August 1, 2023 or until further order whichever is earlier. “

Pursuant to our aforesaid order, Howrah Municipal Corporation (in short “HMC”) filed a report dated 3.8.23 indicating therein the extent to which demolition has taken place as also the details of the alleged unauthorized construction. The appellant has filed his exception to the said report, which is also on record.

The fact remains that records reveal that a hearing was held before the Borough Officer/Assistant Engineer on January 14, 2021, wherein the appellant herein participated. Subsequently, a demolition order was issued on February 2, 2021, by the office of the Borough Committee-II, HMC.

Therefore, there is in existence a demolition order. The appellant says that he has ascertained that till such time that the Tribunal starts functioning, a demolition order will have to be challenged before the Civil Judge, Junior Division, First Court, Howrah.

We, accordingly, dispose of this appeal along with the connected application by observing that if it is open to the appellant, in law, to challenge the demolition order before a competent forum, the appellant will be at liberty to do so, in accordance with law. However, the respondent/writ petitioner herein should be made a party in such proceeding and such proceeding should be conducted upon notice to the writ petitioner/appellant.

It is made clear that the appellant, if he wishes to challenge the demolition order, must do so within four weeks from date. If he does so, the appropriate forum shall decide such challenge in accordance with law observing the principles of natural justice, as soon as possible and preferably within six months from the date of receipt of appropriate suit/application from the appellant.

It is made clear that if within four weeks from date, the appellant does not approach the appropriate forum challenging the demolition order or is unable to obtain any protective order within four weeks from date, HMC shall proceed in accordance with law in respect of the alleged unauthorized construction and shall give full effect to the demolition order.

For four weeks from date, let no coercive steps be taken in respect of the impugned construction.

We make it clear that we have not gone into the merits of the disputes between the parties. All points are left open for the parties to adjudicate before the appropriate forum.

The order impugned is set aside.

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.)