

06. 10.10.2023
Court No.6
.Tanmoy Ghosh

MAT 1963 of 2023

**Himanga Mercantile Private Limited & Anr.
-Versus-
Madhusree Industries Private Limited & Ors.**

**With
IA No: CAN/1/2023
With
IA No: CAN/2/2023
With
IA No: CAN/3/2023**

Mr. Arindam Banerjee, Adv.,
Ms. Arpita Saha, Adv.,
Ms. Rituparna Chatterjee, Adv.,
Ms. Khushboo Chaudhary, Adv.

...for the appellants/applicants.

Affidavit of service filed in Court today be kept with the records.

It does not appear that the writ petitioners/ respondent nos. 1 and 2 herein have received notice of this appeal. However, we need not defer hearing of this appeal since the present intending appellants are successors-in-interest of the writ petitioners insofar as the property in question is concerned.

In spite of service, neither the Municipality, nor the State is represented.

In Re: IA No: CAN/1/2023

This is an application for leave to appeal against a judgment and order dated July 24, 2023, whereby the writ petition filed by the respondent nos. 1 and 2 herein

being WPA 13505 of 2018, was disposed of by a learned Single Judge of this Court.

The present applicants were not parties to the writ petition. They came into the picture a few months ago when they purchased the concerned property from the writ petitioners.

The writ petitioners had approached the learned Single Judge with the grievance that unauthorized construction was made touching the boundary wall of their premises and encroaching on public paths. Various reports were filed by the Municipality. Ultimately, on the day when the writ petition came up for final hearing, it was submitted on behalf of the present applicants that they should be allowed to step into the shoes of the writ petitioners, having acquired the property in question from the writ petitioners. Such request was not granted by the learned Judge. The learned Judge disposed of the writ petition granting liberty to the appropriate parties to make representation to the Municipality seeking removal of the unauthorized structures.

The applicants say that the applicants ought to have been permitted to step into the shoes of the writ petitioners and carry the writ petition to its logical conclusion. That would have avoided multiplicity of proceedings. Now, if the learned Judge's order is to be followed, that may give rise to various legal proceedings. Hence, the applicants are aggrieved.

We have heard learned Counsel for the applicants. We are of the view that the applicants may have something to say as regards the order sought to be impugned. Leave is granted to the applicants to prefer appeal against the judgment and order dated July 24, 2023.

Accordingly this application being IA No: CAN/1/2023 is allowed and disposed of.

In Re: MAT 1963 of 2023
With
IA No: CAN/2/2023
With
IA No: CAN/3/2023

With the consent of learned Counsel appearing for the appellants, the appeal and the connected applications are taken up together for hearing.

According to the appellants, the learned Judge, by the order impugned, in effect directed initiation of proceedings under Section 218 of the West Bengal Municipal Act, 1993 (hereinafter referred to as the '1993 Act'). Learned Counsel for the appellants say that such a long drawn process may not be necessary since the relevant provision in this case is not Section 218 but Section 184 of the 1993 Act, which prescribes the procedure for removal of encroachments on public streets, etc. Learned Counsel says that in this case, there is no dispute that the unauthorized stalls have been erected on public footpath. The same ought to be

removed. Earlier, an order had been passed by the Chairperson of the Municipality for removal of such illegal structures. The order was partly implemented. The structures touching the boundary wall of the concerned property were removed but other structures were left untouched. Learned Counsel submits that the remaining structures, which are indisputably without sanction of the Municipality, should be forthwith removed.

If unauthorized construction has been made, whoever be the person responsible, such construction must be removed. The provisions of the Municipal Act must prevail. However, we do not find on record any order of the Board of Councillors of the Municipality directing removal of the unauthorized construction raised on public path. Section 184 of the 1993 Act requires the Board of Councillors to pass such an order. Even if the Chairperson of the Municipality had passed such an order earlier, the same would not be sufficient because the Chairperson is not authorized to issue such order. Hence, we are of the view that the best avenue for the appellants to seek redressal of their grievance is to make a comprehensive representation to the Board of Councillors of Barasat Municipality with supporting materials ventilating their grievance. If such a representation is made within a fortnight from date, the same shall be disposed of by the Board of Councillors,

by a reasoned order, in accordance with law, within eight (8) weeks from the date of receipt of a copy of this order along with a copy of the representation, after granting opportunity of hearing to the appellants herein as also all other concerned parties, as the Board of Councillors may deem fit and proper. Needless to say, if the appellants are correct in saying that illegal constructions have been made by encroaching on a public path, the Board of Councillors would consider exercising its power under Section 184 of the 1993 Act. It is made clear that if the Board of Councillors finds that this is a fit case for exercise of power under Section 184 of the 1993 Act, the question of granting hearing to any other party may not arise since Section 184 of the 1993 Act contemplates urgent action by the Board of Councillors or by any Officer authorized by it, even without notice to any party.

We further direct that in the event the Board of Councillors come to a conclusion that action is necessary whether under Section 184 of the 1993 Act or under any other provision of the Act, such action will be taken and completed within six (6) weeks from the date of the reasoned order being passed by the Board of Councillors.

A report will be prepared by the Board of Councillors, Barasat Municipality, recording compliance of this order and the same shall be retained with the

records of the Municipality. A copy of such compliance report will be made available to the appellants within a fortnight from the date of the report.

Since we have not called for affidavits, the allegations in the stay petition shall be deemed not to have been admitted by the respondents.

The appeal being MAT 1963 of 2023 and the connected applications being IA No: CAN/2/2023 and IA No: CAN/3/2023 are disposed of.

Let urgent photostat certified copy of this order, if applied for, be made available to the parties upon compliance with all requisite formalities.

(Arijit Banerjee, J.)

(Apurba Sinha Ray, J.)