

22.08.2023
Item No.11
Court No.6.
S. De

**F.M.A. 1404 of 2022
With
I.A. No. CAN/1/2022**

**Chowdhury Abul Hasnat.
Vs
The Burdwan Municipality & Ors.**

Syed Julfikar Ali,
...for the appellant.
Mr. Subhasis Bandopadhyay,
...for the Municipality.
Mr. Uttiya Ray,
Mr. Arnab Mandal,
...for the private respondents.

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

It appears that the present writ petitioner who is the respondent in this appeal made unauthorized construction. Demolition order was issued by the Burdwan Municipality. For implementation of such demolition order, the present appellant and another person approached a learned Single Judge of this Court in the writ jurisdiction by filing WPA 8718 of 2021. By an order dated July 20, 2022, that writ petition was disposed of by a learned Single Judge with the following observations and directions :

“It appears from the submissions made on behalf of the parties that as on date there is no order

cancelling/staying operation of the order of demolition.

In view of the above, the Municipality is bound to execute the order that has been passed.

On the prayer of the Burdwan Municipality, time to implement the order of demolition is extended for a period of eight weeks from date.”

It appears that by an order dated August 10, 2022, issued by the Chairman of Burdwan Municipality, August 30, 2022, was the date fixed for carrying out the demolition programme. In the mean time, the present writ petitioner filed an appeal against the demolition order in the Court of the learned Civil Judge (Jr. Divn.), 2nd Court, Burdwan, being Misc. Case No. 60, 2022. We are told that ad interim order of injunction or stay was refused.

In the aforesaid factual background, the present writ petition was filed wherein the writ petitioner prayed for deferment of execution of the demolition order in view of pendency of his appeal against the demolition order. The learned Single Judge noted that the writ petitioner's appeal is pending before the competent forum and a stay application has been filed therein which is pending consideration. The learned Judge disposed of the writ petition with the following observations and directions :

“For the ends of justice, the Burdwan Municipality is directed to keep the demolition programme which is fixed on 30th August, 2022 in abeyance for a limited period upto 9th September, 2022.

In the event, the petitioner fails to produce any order of stay from the competent Court, it will be open for the Municipality to proceed in accordance with the demolition programme issued by the Municipality on 10th August, 2022.

The learned Court below is directed to decide the application for stay on merits, without granting any unnecessary adjournment to either of the parties.

It is made clear that this Court has not entered into the merits of the order of demolition or the demolition programme and the Learned Court below shall decide the entire matter on merits without being influenced by any observation made hereinabove.”

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

At the outset, learned advocate for the writ petitioner submits that an order of stay of operation of the demolition order has been obtained by him from the appellate forum on September 7, 2022, and the order is operative till disposal of the statutory appeal. The appeal is still pending.

Learned advocate for the appellant in his usual fairness says that in that view of the matter nothing much really remains in this appeal. However, the appellant should take all steps for expediting the appeal so that the same can be disposed of at an early date. Learned advocate says that Burdwan Municipality, one of the respondents in the appeal, has not yet filed its written objection and has obtained several adjournments for that purpose.

We are of the view that demolition cases should not be kept pending for long. The respondents in the statutory appeal will be at liberty to file written objection within four weeks. Rejoinder, if any thereto, be filed by the appellant within two weeks thereafter. These directions are peremptory.

We request the learned Civil Court before which the statutory appeal is pending, to make all endeavours to dispose of the appeal within eight weeks after pleadings are filed in terms of this order. It is made clear that none of the parties shall obtain unnecessary adjournment.

We have not entered into the merits of the disputes. The appellate forum shall take a decision in accordance with law observing the principles of natural justice.

Since we have not called for affidavits, the allegations contained in the application are deemed not to be admitted by the respondents.

FMA 1404 of 2022 is disposed of along with the application being I.A. No. CAN/1/2022.

Urgent certified photostat copy of this order, if applied for, shall be given to the parties as expeditiously as possible on compliance with all the necessary formalities.

(Arijit Banerjee, J.)

(Apurba Sinha Ray, J.)