

28. 11.10.2023
Court No.6
Tanmoy Ghosh

MAT 1981 of 2023

**Ruhul Amin Molla @ Rahul Amin Molla
-Versus-
Earshad Sultan & Ors.**

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

Mr. Tanmoy Mukherjee, Adv.,
Ms. Utsa Dutta, Adv.,
Mr. Souvik Das, Adv.,
Mr. K.R. Ahmed, Adv.,
Mr. Rudranil Das, Adv.

...for the applicant/appellant.

Mr. Ramij Munsii, Adv.

...for the respondent no.1/
writ petitioner.

Mr. Sandipan Banerjee, Adv.,
Mr. Ankit Sureka, Adv.,
Mr. Sobhan Majumder, Adv.

...for the Howrah Municipal
Corporation.

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

In Re: IA No: CAN/1/2023

This is an application for leave to appeal against a
judgment and order dated September 20, 2023, whereby
the writ petition of the respondent no.1 herein being
WPA 17259 of 2023, was disposed of by a learned Single
Judge of this Court.

The applicant was not a party in the writ petition.
However, he says that he is adversely affected by the
demolition order which the learned Single Judge has

directed to be implemented. He was not heard since he was not made a party to the writ petition. Hence he intends to challenge the order of the learned Single Judge.

Having heard learned Counsel for the parties, we are of the view that the applicant may have something to say about the order sought to be impugned. Leave is granted to the applicant to prefer appeal against the judgment and order dated September 20, 2023.

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

In Re: MAT 1981 of 2023

With

IA No: CAN/2/2023

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

The writ petitioner approached the learned Single Judge with the complaint that illegal and unauthorized construction has been made at Holding Nos. 96 and 97/1, Molla Para Lane, P.S. – Shibpur, under Ward No.40, Howrah Municipal Corporation (HMC), at the behest of the private respondents in the writ petition. The learned Judge noted that the writ petitioner's grievance was that his objection to the unauthorized construction remained unconsidered by the Corporation.

At the time of hearing, learned Advocate for the writ petitioner submitted that the Corporation had taken

steps to deal with the unauthorized construction and a self-demolition order dated September 5, 2023, has been passed directing the person(s) responsible to demolish the unauthorized construction.

Noting the aforesaid, the learned Single Judge disposed of the writ petition with the following observations and directions:-

“Upon hearing the submissions made on behalf of the parties, it appears that the Howrah Municipal Corporation has proceeded to redress the grievance of the petitioner and has passed order of demolition.

The Howrah Municipal Corporation is directed to ensure that the order of demolition is implemented in accordance with law.

The Officer-in-Charge, Shibpur Police Station is directed to render necessary assistance to the men and agents of the Howrah Municipal Corporation at the time of implementing the order of demolition and for the purpose of vacating the structure in question.”

Learned Advocate for the appellant says that there is no self-demolition notice or any kind of demolition notice which has been issued by HMC in respect of Holding No.96, Molla Para Lane, P.S. – Shibpur, Howrah. The self-demolition order dated September 5, 2023, pertains to premises no.97/1, Molla Para Lane, P.S. – Shibpur, Howrah. He says that his client has nothing to do with premises no.97/1 but his client is the owner of premises no.96. Hence, no coercive action can be taken against premises no.96, Molla Para Lane, P.S. – Shibpur, Howrah, without observing the principles of natural justice *vis-à-vis* the appellant.

Learned Advocate for the respondent no.1/writ petitioner, in his usual fairness, agrees that the self-demolition order dated September 5, 2023, relates to premises no.97/1, Molla Para Lane, P.S. – Shibpur, Howrah and not to premises no.96, Molla Para Lane, P.S. – Shibpur, Howrah.

Hence, we dispose of this appeal and the connected application by clarifying that since the demolition order dated September 5, 2023 has been issued in respect of premises no.97/1, Molla Para Lane, P.S. – Shibpur, Howrah, no coercive action will be taken in respect of premises no.96, Molla Para Lane, P.S. – Shibpur, Howrah, on the basis of the self-demolition order dated September 5, 2023, issued by the HMC.

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 1981 of 2023 and the connected application being IA No: CAN/2/2023 are accordingly 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.)