

D/L
Item No. 15
08.12.2023
KOLE

**MAT 2087 of 2023
With
IA CAN 1 of 2023**

**Sri Manab Kumar Paramanik @ Pramanick & Anr.
-Vs.-
The Howrah Municipal Corporation & Ors.**

Mr. Mihir Kumar Das,

...for the appellants.

Mr. Sandipan Banerjee,

Mr. Ankit Sureka,

Mr. Sobhan Majumdar,

...for the HMC.

Mr. A. Pal,

...for the State.

Mr. Pinaki Ranjan Chakraborti,

...for the respondent nos. 6 to 9.

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

In the year 2015, the appellant no. 1 approached the learned Writ Court complaining that the private respondents in the writ petition who are also the private respondents in this appeal, have been wrongly permitted to retain 33.82 sq. mtr. of structures raised in deviation from the sanctioned plan.

The learned Judge took note of an order dated March 27, 2015, passed by the Commissioner, Howrah Municipal Commissioner (in short 'HMC'), whereby seven illegally constructed pillars were directed to be demolished. Direction was also given for demolition of other unauthorized construction at the instance of the private respondents. The learned Judge then noted that subsequently the Commissioner passed an order dated May

2, 2015 permitting retention of certain portions of the construction made in deviation from the sanctioned plan.

It was submitted on behalf of HMC before the learned Single Judge that further demolition at the premises in question would affect the structural stability of the entire building and if further demolition is undertaken, the entire building may collapse. It was submitted that so far as possible the unauthorized construction has been removed. Any further demolition would impair the stability of the entire building.

The learned Judge opined that at the relevant point of time, i.e., 2015, the Commissioner, HMC did not have any power to permit retention. The third proviso to Section 177 of the HMC Act, 1980 was inserted by Section 5(1) of the HMC (Amendment) Act, 2017 and that proviso came into effect from September 20, 2017. Therefore, in 2015, the Commissioner could not have allowed retention of any portion of the unauthorized construction. Accordingly, the learned Judge set aside the Commissioner's order dated May 2, 2015, permitting retention of a portion of the unauthorized construction and directed the Commissioner, HMC to revisit the issue and pass a reasoned order in accordance with law after granting opportunity of hearing to the writ petitioner and the private respondents.

Being aggrieved, the writ petitioners have come up by way of this appeal.

Learned Advocate for the appellants submitted that the learned Judge, after setting aside the Commissioner's

order dated May 2, 2015, ought not to have directed the Commissioner to consider the issue afresh.

We fail to see how the appellants/writ petitioners will be prejudiced if the Commissioner passes a fresh order in the matter as directed by the learned Single Judge. The appellants will be given full opportunity of hearing. If necessary, the Commissioner shall cause fresh inspection of the property in question. We do not see any apparent illegality or impropriety in the order under appeal. We, therefore, do not interfere. We only extend the time period for the Commissioner to carry out the exercise directed by the learned Single Judge by twelve weeks from date.

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

The appeal and the connected application are, accordingly, disposed of.

Urgent photostat certified copy of this order be supplied to the parties, if applied for, as early as possible.

(Arijit Banerjee, J.)

(M. V. Muralidaran, J.)