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22-11-2023
(Ct. no.06)
debajyoti

**IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
APPELLATE SIDE**

**MAT 2114 of 2023
+
IA NO:CAN/1/2023**

**Sushil Kumar Agarwal
Vs.
Sri Suraj Kamkar & Ors.**

Ms. Sutapa Sanyal,
Mr. Deepak Kumar Singh,
Mr. Debrup Bhattacharya

... For the Appellant.

Mr. Sunny Nandy,
Ms. Riya Das,
Mr. Satya Prakash Shaw

... For Respondent No.1.

Mr. Sandipan Banerjee,
Mr. Ankit Sureka,
Mr. Sobhon Majumder

... For Howrah Municipal
Corporation.

Mr. Asish Guha,
Mr. Benazir Ahmed

... For the State.

Read order dated October 18, 2023.

As indicated in that order, a hearing was held before the Assistant Engineer-in-Charge, Building Department, Howrah Municipal Corporation (in short 'HMC') on November 10, 2023 at 12-00 noon, wherein the representatives of the appellant and the respondent/writ petitioner were present. The Officer considered the appellant's prayer for regularization, but rejected the same by order dated November 14, 2023. Copies of the said order have been filed in Court. Let the same be retained with the records.

Ms. Sanyal, learned advocate for the appellant, says that no effective hearing was given by the Assistant Engineer. The matter should be re-heard.

We are unable to accede to the request of Ms. Sanyal. At the request made on behalf of the appellant, we had directed the Competent Officer in HMC to consider the appellant's prayer for regularization of the unauthorized portions constructed in deviation from the sanctioned plan and/or constructed without any sanctioned plan. Such request of the appellant has been considered by the Assistant Engineer and has been rejected. We are not inclined to grant any further indulgence to the appellant. Admittedly, the sixth floor has been constructed without obtaining any sanctioned plan at all.

Mr. Banerjee, learned advocate, representing HMC, on instructions, says that if the appellant demolishes the sixth floor which is completely unauthorized and is not supported by any sanctioned plan, within a specified time period, then and in that event, HMC may reconsider the appellant's request for regularization in accordance with the applicable rules and regulations insofar as the deviations in the other floors of the building in question are concerned.

We enquired of Ms. Sanyal as to whether her client is willing to undertake to demolish the sixth floor, which is not backed by any sanctioned plan, within a reasonable period of time. The appellant's son, namely, Mr. Surendra Agarwal, is present in Court and is instructing Ms. Sanyal. Mr. Surendra Agarwal says that he is authorized by his father, the appellant, to instruct learned advocate. Mr.

Surendra Agarwal records an undertaking on behalf of the appellant that within four months from date, the sixth floor of the building in question, for which there is no sanctioned plan, will be demolished. Learned advocate for the appellant has explained to Mr. Agarwal the consequences of breach of an undertaking given to Court. We record the aforesaid undertaking of the appellant.

In the event, the appellant demolishes the sixth floor within four months from date, HMC shall reconsider the appellant's request for regularization of the unauthorized portions in the other floors of the building in question which have been constructed in deviation from the sanctioned plan. For that purpose, a further inspection will be held by the Competent Officer of HMC in the presence of the appellant and all concerned and the appellant shall be granted a further opportunity of hearing. An impartial decision shall be taken afresh by HMC observing the principles of natural justice.

In the event, the demolition of the sixth floor is not complete within the time period indicated above, HMC will be under no obligation to consider any further request of the appellant. If there are occupants in various portions of the building in question, they would be at liberty to approach HMC with appropriate representation.

No useful purpose will be served by keeping either the appeal or the writ petition pending. The appeal and the connected application are, accordingly, disposed of. The writ petition being WPA 10574 of 2023 is also disposed of by treating the same as on the day's list.

Affidavits not having been called for, the allegations in the stay petition shall be deemed not to have been admitted by the respondents.

All parties shall act on the server copies of this order duly downloaded from the official *website* of this Court.

Urgent photostat certified copies of this order, if applied for, be supplied to the parties on compliance of all necessary formalities.

(M. V. Muralidaran, J.) (Arijit Banerjee, J.)