

24.11.2023
Item no.2.
Court No.6.
AB

M.A.T. 2240 of 2023
With
IA CAN 1 of 2023
IA CAN 2 of 2023
IA CAN 3 of 2023

Nagma Parveen
Vs
Abul Kalam & Others

Mr. Raghunath Chakraborty,
Mr. Debasish Banerjee,
Mr. Pawan Kr. Gupta,
Mr. Vijay Vermafor the Appellant.

Mr. Sandipan Banerjee,
Mr. Ankit Sureka,
Mr. Sobhan Majumdarfor the HMC.

Mr. Ayan Banerjee,
Ms. Debasree Dhamali,
Ms. Riya Ghoshfor the Bally Municipality.

Mr. Subhasish Pachal
.....for the Respondent Nos.1 and 2.

Mr. Tapan Kr. Mukherjee,
Mr. Somnath Naskar,
Mr. Sandip Chattopadhyayfor the State.

In re : CAN 2 of 2023

The applicant says that she is the lawful owner and occupant of a flat in the building, which has been directed to be demolished by Bally Municipality. The learned Single Judge in the present writ petition has directed implementation of such demolition order and has also directed Howrah Municipal Corporation to assist Bally Municipality in implementing the

demolition order. The applicant says that she should have been heard by the Municipality in terms of the earlier order of the Division Bench dated September 6, 2023, passed in MAT 1671 of 2023. The hearing that was granted was by the Administrator and not the Municipality. Therefore, no hearing in terms of the Division Bench order was granted to the applicant. The applicant seeks leave to appeal against the impugned order of the learned Single Judge dated September 19, 2023, which reads as follows:

“Order of demolition dated September 12, 2023 passed by the Administrator, Bally Municipality & Sub Divisional Officer (Sadar), Howrah has been served upon all the necessary parties.

The order of demolition is required to be implemented at once.

The Commissioner of Police, Howrah Police Commissionerate through the Inspector in Charge, Belur Police Station is directed to immediately take steps to vacate the subject structure so that the unauthorized construction can be demolished.

Bally Municipality, in consultation with the Howrah Municipal Corporation, shall intimate the tentative date of demolition to the police so that necessary police arrangement may be made for vacating and also for demolition of the subject structure. The date of demolition shall be affixed at several conspicuous places in and around the subject structure so that the occupants of the unauthorized structure are made aware of the date of demolition. If the occupants fail to vacate the subject structure voluntarily, then it will be open for the police to vacate the same for the purpose of implementation of the order of demolition.

List the matter on November 23, 2023 for recording further updates.

The order dated September 12, 2023 passed by the Bally Municipality be retained with the records.

Report filed by the police be also retained with the records.”

We are not inclined to grant leave to the applicant. Admittedly, there is no sanctioned plan in respect of the building in question. However, the appellant would be at liberty to approach the learned Single Judge or pursue any other remedy in law that she may be entitled to. If any such proceeding is initiated by the appellant, the same shall be decided by the concerned forum without being influenced by the fact that we have declined leave to the appellant to prefer appeal against the impugned order dated September 19, 2023. We have declined such leave only on the ground that the appellant should have appropriately approached the learned Single Judge with her grievance that she was not made a party to the writ petition in spite of being an interested person, instead of approaching us.

Learned Advocate for the writ petitioners says that after the present appeal was filed, yesterday, i.e., on November 23, 2023, a further order has been passed by the learned Single Judge for fixing the date of demolition. We only put the same on record.

The application for leave is dismissed. Consequently, the appeal and the connected applications are also dismissed.

Urgent photostat certified copy of this order, if applied for, be supplied expeditiously after compliance with all the necessary formalities.

(Arijit Banerjee, J.)

(M. V. Muralidaran, J.)