

06.02.2023
Item No.7
Court No.6.
AB

**M.A.T. 1947 of 2022
With
I A CAN 1 of 2022**

**Joydip Paul & Anr.
Vs
The State of West Bengal & Others**

Mr. Arjun Mukherjee,
Mr. Sanjay Saha,
Mr. Subhasish Bhattacharya
...for the Appellants.
Mr. Manoj Malhotra,
Ms. Debarati Sen (Bose)....for the State.

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

This appeal is directed against a judgment and order dated September 23, 2022, whereby the writ petition of the appellants being WPA No.14574 of 2022 was dismissed.

The appellants approached the learned Single Judge challenging an order dated June 14, 2022, passed by the Chairman of the Madhyamgram Municipality, rejecting the appellants' prayer for amalgamation of two adjacent premises that undisputedly belong to the appellants.

It appears that the appellants had obtained two separate building plans for constructing two buildings on the adjoining plots of land. After making such construction, they joined the roofs of the two

buildings. They say that since their request for amalgamation was kept pending by the Municipality, they proceeded to obtain two separate building plans and raised two buildings.

Thereafter, the Municipality considered the application for amalgamation and rejected the same on the ground that there is no law permitting amalgamation after sanctioning two separate building plans where construction is complete by joining the roofs of two buildings without permission and without leaving requisite side space.

By an order dated September 6, 2022, the learned Judge directed the Municipality to consider whether the act of the appellants in joining the adjoining roofs may be regularized. The Municipality was granted liberty to conduct a spot enquiry. Such inspection was held. The Assistant Engineer, Madhyamgram Municipality addressed a communication dated September 19, 2022 to the Chairman of the Municipality, which reads as follows:

“After verification of all sorts of documents it is found that two no. building plan have been approved in holding no.363/1/49 and 363/49/1 in the name of Joydip Pal and Smt Sumana Pal with two no separate stair case providing 22 (twenty two) no. column totally.

But it has been constructed a single building with 14 (fourteen) no. column. It is impossible carry the combined load of building by 14 no. column

instead of 22 no. column. It may be failed at the time of settlement. It is completely an unauthorized building. It has been violated the building rules in different ways. Hence, BOC meeting can produce the building rules u/s 32 of building rules 2007.”

When the matter came up again before the learned Single Judge on September 23, 2022, the learned Judge considered the aforesaid communication. The learned Judge dismissed the writ petition with the following observation:

“The report also mentions that two separate building plans were approved with separate staircase but the petitioners constructed in deviation of the plan sanctioned. The Municipality never permitted the petitioners to join the roof of the two buildings. It appears from the report of the Municipality that the building in question is an unsafe one and accident may cause in future.

In view of the above, the Court is not inclined to exercise jurisdiction in the matter.”

We have heard learned Counsel for the appellants. He says that the issue regarding unauthorized construction is pending before the learned District Judge, Barasat. The Municipality had passed a demolition order, which has been carried in appeal by the appellants herein before the learned District Judge, Barasat. Learned Advocate says that the issue of amalgamation and the issue of unauthorized construction are separate issues. Even

assuming that the appellants have raised unauthorized construction, the same should not stand in the way of the Municipality allowing the appellants' prayer for amalgamation.

Learned Counsel further draws our attention to Rule 47 of the West Bengal Municipal (Building) Rules, 2007, in support of his submission that the Rules clearly contemplate amalgamation of two or more premises. The view of the Municipality that the law does not envisage amalgamation, is patently incorrect.

Undisputedly, unauthorized construction has been raised by the appellants, which is in deviation from the sanctioned plan. The said issue is pending in appeal before the learned District Judge, Barasat. The learned Single Judge noticed that the appellants have made illegal construction. We have also seen from the communication addressed by the Assistant Engineer to the Chairman of the Municipality, which has been extracted above, that the building is in extremely unsafe condition. In the opinion of the Assistant Engineer, building may collapse at any time.

In view of the conduct of the appellants, we are not inclined to exercise the high prerogative writ jurisdiction to grant any equitable relief to the appellants. We are in agreement with the learned Single Judge that this is not a fit case for exercising writ jurisdiction in favour of the appellants.

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

M.A.T. No.1947 of 2022 is, accordingly, dismissed along with IA CAN 1 of 2022, without any order as to costs.

Nothing in this order shall have any bearing on the proceedings pending before the learned District Judge, Barasat. In the event, the unauthorized constriction is regularized or it is held by the competent forum that there is no unauthorized construction, the appellants will be at liberty to apply afresh for amalgamation of the two premises in question.

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

(Apurba Sinha Ray, J.)

(Arijit Banerjee, J.)