

12. 05.12.2023
Court No.6
Tanmoy Ghosh

MAT 2298 of 2023

Sourav Ghosal & Ors.
-Versus-
Sandhya Ghosh & Ors.

With
IA No: CAN/1/2023
With
IA No: CAN/3/2023

Mr. Saptangshu Basu, Ld. Sr. Adv.,
Mr. Supriyo Chattopadhyay, Adv.,
Mr. Sudip Kr. Maiti, Adv.,
Ms. Debosri Chatterjee, Adv.

...for the appellants.

Mr. Falguni Bandyopadhyay, Adv.,
Mr. Soumen Ghosh, Adv.,
Ms. Riya Ballav, Adv.

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

Mr. Asish Kumar Guha, Adv.,
Mr. Benazir Ahmed, Adv.

...for the State respondents.

Mr. Ayan Banerjee, Adv.,
Ms. Debasree Dhamali, Adv.,
Ms. Riya Ghosh, Adv.

...for the Bally Municipality.

Mr. Probal Kr. Mukherjee, Ld. Sr. Adv.,
Mr. Debanik Banerjee, Adv.,
Mr. Akash Ganguly, Adv.

...for the respondent nos. 7-9.

Read order dated November 28, 2023.

Today, we propose to dispose of the appeal and the connected applications, having heard learned Counsel for the parties at some length. For the sake of completeness, we reproduce herein the relevant portion of the order dated November 28, 2023.

“On the complaint lodged by Sandhya, an order of demolition had been passed by Howrah Municipal Corporation on March 17, 2022, for removal of alleged unauthorized construction made by the developer being Partho Ghosh (in short, ‘Partho’) in deviation from the sanctioned plan.

Partho assailed such order before a learned Single Judge of this Court by filing WPA 7478 of 2022. By a judgment and order dated June 7, 2022, the learned Single Judge set aside the order of demolition dated March 17, 2022, on the ground that the order was vague. The order did not indicate which portion of the construction is unauthorized and which portion Partho was required to remove. Having set aside the said order of demolition, the learned Judge disposed of the writ application by observing as follows:-

“... As at present all records of the said property has been forwarded and transferred to the Bally Municipality, accordingly, it will be appropriate to direct the Administrator of the Bally Municipality to reconsider the matter afresh after giving fresh opportunity of hearing once again to the petitioner as well as all other necessary parties.

Necessary steps shall be taken in the matter by the Bally Municipality through its Administrator strictly in accordance with law, at the earliest, but positively within a period of ninety days from the date of communication of a copy of this order.

The Bally Municipality shall pass a reasoned order and communicate the same to the parties immediately thereafter...”

Two appeals were preferred against the said order of the learned Single Judge, one by Sandhya and the other by Partho, being MAT 925 of 2022 and MAT 1005 of 2022, respectively. By a judgment and order dated July 14, 2022, a co-ordinate Bench of this Court disposed of the said appeals. The relevant portion of the said judgment and order reads as follows:-

“Being aggrieved, Sandhya has preferred an appeal being MAT 925 of 2022. She contends that there is a report of the Chairman of Bally Municipality on record which clearly indicates the extent of deviation from the sanctioned plan in which construction was made by Partho. Such report was not placed before the learned Single Judge. It was wholly unnecessary to set aside the order of the Assistant Engineer and send back the matter for fresh consideration.

Partho has also preferred an appeal being MAT 1005 of 2022. His grievance is that the order has been passed giving a complete go-bye to the statutory provisions embodied in Section 218 of the West Bengal Municipal Act, 1993.

We have considered the rival contention of the parties. We are not in agreement with the submission made on behalf of either of the appellants.

Insofar as Sandhya’s appeal is concerned, we are of the view that the learned Judge was perfectly justified in setting aside the order

of the Assistant Engineer on the ground of vagueness. The order must stand on its own. If for ascertaining the true scope and effect of an order, one has to refer to other documents, then on that ground alone, the order would be deficient. An order should be self-explanatory and self-sufficient. We are of the view that the Assistant Engineer's order was such kind of an order which did not indicate with any degree of precision, the illegal construction made by Partho which was in deviation from the sanctioned plan.

Insofar as Partho's appeal is concerned, we see that Section 218 of the 1993 Act empowers the Board of Councillors of the Municipality to pass orders of modification, demolition etc. if the Board is satisfied that the erection of any building has been done without sanction or permission under the law or in deviation from a sanctioned plan. Presently, Bally Municipality does not have a Board of Councillors, as we are told. There is an Administrator who is discharging the functions of the Board. Accordingly, the learned Single Judge has sent the matter back to the Administrator of the Municipality for fresh consideration. We see absolutely no infirmity in the order impugned before us. We, however, clarify that the Administrator shall take steps in accordance with the order of the learned Single Judge and naturally, in accordance with law, meaning thereby the provisions of the applicable statutes including the West Bengal Municipal Act, 1993. A decision shall be taken by the Administrator within ninety days from the date of communication of this order to the Administrator. It will be a reasoned order and will be passed after granting an opportunity of hearing to all concerned parties, including the present appellants. Needless to say that if the Administrator finds that there is any unauthorized construction, appropriate orders will be issued by him in that behalf."

Subsequently, a fresh demolition order has been passed by the Municipality on December 6, 2022. That order reads as follows:-

"After careful consideration and observation of the submissions made by the petitioners as well the private respondents and the above noted joint inspection report, the undersigned concluded that the construction made beyond sanction plan with side deviation stands unauthorized due to willful and deliberate violation of West Bengal Municipal Act, 1993, committed by the private respondents. So, the private respondents are hereby directed to remove/demolish the unauthorized portion of the construction made at the suit premises, at their own cost, within 15 days from the date of receipt of this order failing which this Municipal Authority will be at liberty to cause demolition of the same without any further notice and the cost of demolition will be recovered from the respondents thereafter."

Alleging that the said order of demolition was not being implemented by the Municipality, Sandhya approached the learned Single Judge in the present round of litigation by filing WPA 2977 of 2023. The learned Single Judge, by the order impugned, directed immediate implementation of the demolition order. Hence this appeal.

Learned Senior Advocate for the appellants says that the earlier Division Bench order clearly directed the Municipality to pass a fresh order after hearing all concerned parties. However, the appellants, who are owners and occupants of a flat in the building in question, were never given an opportunity of hearing. Further, the order of demolition dated December 6, 2022, is even more vague than the order of demolition dated March 17, 2022, which had been passed earlier by the Municipality and which was set aside by the learned Single Judge on the ground of vagueness. Such order of the learned Single Judge was upheld by the Division Bench. Accordingly, on the dual grounds of breach of the principles of natural justice and vagueness in the concerned demolition order, the appellants challenge the demolition order as well as the order of the learned Single Judge directing execution of such order.

Mr. Mukherjee, learned Senior Advocate appearing for Partho, in principle, supports the case of the appellants. He particularly points out that although the private respondents, meaning thereby the developer i.e., Partho was called upon by the Municipality to remove the alleged unauthorized portion of the impugned construction, vagueness of the demolition order in question prevented Partho from doing so. Another issue is made by Mr. Mukherjee as regards non-supply of the inspection report to Partho or his learned Advocate.

We are prima facie satisfied that the appellants have an arguable case. Indeed, the earlier Division Bench order directed the Municipality to pass an order afresh only after hearing all concerned parties and not only the parties to the legal proceedings. This would ordinarily mean that all parties likely to be affected by any demolition order that may be passed, should have been heard. After all, nobody should be condemned un-heard. This is the basic tenet of the salutary principle of audi alteram partem. We are of the prima facie view that the appellants should have been heard by the Municipality prior to the order dated December 6, 2022, being passed by the Municipality.

We are told that demolition activity is in progress even as of now, in terms of the order of the learned Single Judge. We are of the view that the balance of convenience also warrants passing an interim order. We are also of the view that unless an interim order is granted today, the appellants may suffer irreparable loss and injury.

Accordingly, although the appellants have not been able to show that Sandhya has received notice of this appeal, we

deem it appropriate to stay the operation of the learned Single Judge's order as also the operation of the demolition order dated December 6, 2022 for a period of ten days from date (08.12.2023).

Let the matter be listed a week hence (05.12.2023). On the adjourned date, affidavit of service will be filed in Court by the appellants. Since we are in seisin of the appeal, let further proceedings in connection with WPA 2977 of 2023 remain stayed till the adjourned date."

As per the earlier direction, the matter has been listed today.

Learned Senior Advocate representing the appellants says that in course of implementing the demolition order, the flat of the appellants has been damaged exposing the interiors to the elements of nature. The appellants reside in that flat. To make the flat habitable, certain urgent repairs need to be done to the flat. This, the appellants are prepared to do under the supervision of any Officer/Engineer deputed by the Bally Municipality.

Learned Advocate for the respondent no.1/writ petitioner says that the building in which the appellants occupy the concerned flat, was constructed in violation of an *interim* order of a learned Single Judge of this Court passed in W.P. 32208 (W) of 2014, being a writ petition filed by Sandhya. He further says that for violation of such injunction order, Sandhya has initiated a contempt proceeding which is pending before a learned Judge of this Court. The present appellants, however, are not parties to such contempt application, nor are

they parties to the writ petition being W.P. 32208 (W) of 2014.

Mr. Banerjee, learned Advocate for the Municipality, says that the demolition order which is the subject-matter of the present proceedings, is sufficiently precise and hence the same should not be set aside on the ground of the order being vague. He says that he can demonstrate from the records that there is no ambiguity in the demolition order.

We have already recorded our *prima facie* opinion in the earlier order that the current demolition order is liable to be set aside at least on the ground of the present appellants not having been heard or granted an opportunity of hearing by the Municipality before issuance of such demolition order. We see no reason to deviate from such opinion. Accordingly, the order dated December 6, 2022, passed by the Bally Municipality, is set aside. The Municipality is directed to conduct fresh local inspection of the impugned construction in the presence of the recorded owners and the writ petitioner and/or their authorized representatives and the parties who are likely to be affected by any demolition order. Full opportunity of hearing be granted by the Municipality to the aforesaid persons before passing a fresh order which should clearly mention the nature and extent of unauthorized construction, if any, and indicate with sufficient precision the extent of demolition

required, if any. Let this exercise be completed within a month from the date of communication of this order by any of the parties to the Administrator of the Bally Municipality.

The order under appeal is accordingly set aside.

The appellants will be at liberty to carry out essential repairs to the flat that they occupy strictly under the supervision of an Officer/Engineer to be deputed by Bally Municipality. This will not create any equity or special interest in favour of the appellants. In other words, if it is found ultimately that the unauthorized building has to be demolished, such order shall be implemented subject to interdiction of any competent forum. The repairing work should be completed by the appellants within seven days from the day the Municipality deposes an Officer/Engineer to supervise such work.

Mr. Banerjee, learned Advocate, on behalf of the Municipality requests Mr. Probal Mukherjee, learned Senior Advocate representing the Developer of the concerned property, to supply a copy of the Building Plan. We are sure Mr. Mukherjee will oblige.

Learned Advocates for the parties say that no useful purpose will be served by keeping the writ petition pending.

Accordingly, WPA 2977 of 2023 is treated as on day's list and is disposed of.

The appeal being MAT 2298 of 2023 and the connected applications being IA No: CAN/1/2023 and IA No: CAN/3/2023 are also 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.)

(Prasenjit Biswas, J.)