

D/L
Item No. 10
05.12.2023
KOLE

MAT 2319 of 2023
With
IA CAN 1 of 2023
With
IA CAN 2 of 2023
With
IA CAN 3 of 2023

Sri Surit Kumar Mukhopadhyay
-Vs.-
Smt. Indrani Panja & Ors.

Mr. Ashok Kr. Banerjee, Sr. Adv.
Mr. Tanmoy Mukherjee,
Mr. Souvik Das,
Mr. Rudranil Das,

...for the appellant.

Mr. Ayan Banerjee,
Ms. Debjani Sengupta,
Ms. Paulomi Ghosh,

...for the respondent no. 1.

Mr. Sandipan Banerjee,
Mr. Ankit Sureka,
Mr. Sobhan Majumdar,

...for the HMC.

In Re: CAN 1 of 2023 in MAT 2319 of 2023:

This is an application for condonation of delay of 13 days in presenting the appeal as noted by the Additional Stamp Reporter.

Causes shown being sufficient, we condone the delay.

The application for condonation of delay is, thus, allowed.

IA CAN No. 1 of 2023 is disposed of.

In Re: CAN 2 of 2023 in MAT 2319 of 2023:

This is an application for leave to prefer appeal against an order dated October 18, 2023, passed in WPA 11557 of 2023, in the independent capacity of the appellant, since he has been impleaded as respondent no. 3 in the writ

petition by his designation. He says that he is personally affected by the order and therefore this is an application for leave to appeal in his personal capacity.

The application for leave to appeal is allowed.

IA No. CAN 2 of 2023 is disposed of.

In Re: MAT 2319 of 2023 and CAN 3 of 2023:

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

The respondent no. 1 herein approached the learned Single Judge alleging unlawful construction at the instance of the respondent nos. 7 and 8 in this appeal. It appears that an order of self-demolition was passed by the Howrah Municipal Corporation (in short 'HMC') on September 19, 2022.

The Learned Judge directed HMC and the Police Authority to take immediate steps "to demolish the entire portion of the illegally constructed part of the building at the cost of the private respondents by three weeks from date and the authorities named above shall have the liberty to use any machinery or tools for demolition of the structure." This order was recorded on October 13, 2023, wherein, the learned Single Judge further observed and directed as follows:-

"The illegal construction has been made in Ward no. 44. Now, I understand there is no local Councillor in that Ward because the time period for the local Councillors have expired. However, there is a Sub-Assistant Engineer and An Assistant Engineer of the Municipal Corporation being the respondent nos. 3 and 4 who are held responsible for such illegal construction and this court does not believe that without their

convert or overt support such an illegal construction could have been made.

Therefore, the Assistant Engineer being the respondent no. 3 as well as the Sub-Assistant Engineer being the respondent no. 4 are directed to file affidavit showing cause as to how such construction has been made despite their presence and getting salary from the public exchequer. Such affidavit is to be filed by them on 18th October, 2023 though the matter will appear in the list on 1st December, 2023. On 18th October, 2023 the matter will also appear under the heading “To Be Mentioned”.

List the matter accordingly.

Mr. Sobhon Majumder, learned advocate for the Howrah Municipal Corporation is directed to communicate this order to the respondent nos. 2 and 4 as to filing affidavits as has been indicated above on 18th October, 2023 when this matter will be taken up at 3 p.m. The officers being respondent nos. 3 and 4 shall appear before this court personally on 18.12.2023.”

When the matter was listed on October 18, 2023, before the Learned Single Judge, the learned Judge recorded the following order.

“The Sub-Assistant Engineer and the Assistant Engineer of the Howrah Municipal Corporation, namely Mr. Amitava Rakshit and Mr. Surit Kumar Mukhopadhyay respectively (i.e. the respondent nos. 3 and 4) are present in person. They are the responsible officers for taking steps against the illegal construction above third floor. The building in question is a G+6 storied building according to the petitioner and according to the above engineers it is a G+5 storied building. In any event the 5 floors of the building has been illegally constructed in front of the eyes of the above named engineers.

Despite giving opportunity on the last hearing of this matter the above two persons have not filed any affidavits.

However, the said engineers have completely failed to discharge their duties in taking steps against the unauthorized construction for the reasons best known to them.

An enquiry is required in respect of the above two officers to know why and how they kept their eyes shut as to their duties and if it was for some unlawful gain. How a 5 storied building can be constructed illegally despite the presence of municipal authority which includes their officers like the above two?

I direct the petitioner to add the State Vigilance Commission a party respondent in this matter.

I direct the State Vigilance Commission to start investigation against the assets of the above-named persons whether it is proportionate to their known sources of income or not. The first report/preliminary report of the Vigilance Commission is to be produced before this Court on 15th December, 2023. The Vigilance Commission shall act expeditiously. If the Vigilance Commission finds during the course of investigation involvement of any other officers of the municipal authority they shall approach this court for initiating investigation against the other officers.

We all must keep it in mind that a court of law does not exist for shielding the non-performance, (which raises serious doubt), of the duties of some officers of any authority who have failed to perform their duties for which they have been employed.

This matter is marked as 'Heard-in-part'.

Being aggrieved, the respondent no. 3 in the writ petition has come up before us by way of this appeal.

Referring to the grounds in the memorandum of appeal and the stay application affirmed by the appellant, Mr. Ashok Kumar Banerjee, learned Senior Advocate,

appearing for the appellant submits that in terms of the learned Judge's order dated October 13, 2023, an affidavit was duly affirmed by the appellant on October 18, 2023, prior to the matter being taken up for hearing by the learned Judge. When the matter was called on for hearing, the affidavit was presented before the Court but the same was not accepted by the Court. Had the court looked into the affidavit, the order directing the State Vigilance Commission to conduct investigation may not have been passed.

We find from the impugned order that the learned Judge has recorded that "despite giving opportunity on the last hearing of this matter the above two persons have not filed any affidavits". We have to go by what is recorded in the impugned order. If the appellant says that the aforesaid recording is erroneous, then he will have to approach the learned Single Judge with an appropriate application for correction of the order.

However, we do not think that will be necessary. We are taking on record the affidavit affirmed by the appellant on October 18, 2023. The same shall form part of the writ petition which is pending before the learned Single Judge. Let the original affidavit be filed before the learned Single Judge. A copy of the affidavit has been annexed to the stay application.

The learned Single Judge may have good reasons for directing vigilance enquiry. We say nothing regarding that as of now. However, we are of the considered opinion that before any effect is given to such a direction as is recorded in

the impugned order, the learned Judge should consider the appellant's affidavit.

Accordingly, the direction in the impugned order is so far as the same concerns addition of State Vigilance Commission as a party and direction on the Vigilance Commission to conduct enquiry/investigation the same shall remain stayed till the learned Single Judge considers the appellant's affidavit and passes a fresh order in the manner His Lordship may deem appropriate.

The appellant and also HMC will be at liberty to file additional affidavit before the learned Single Judge to bring on record any subsequent development.

No useful purpose will be served by keeping the appeal pending.

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

With the aforesaid directions, the appeal and the connected application are disposed of.

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

All parties and the State Vigilance Commission shall act on the server copy of this order duly downloaded from the website of this Court.

(Prasenjit Biswas, J.)

(Arijit Banerjee, J.)