

D/L
Item No 07
01.05.2023
KOLE

**MAT 1997 of 2022
With
IA No. CAN 1 of 2023
With
IA No. CAN 2 of 2023**

**Gopal Chandra Addy
-Vs.-
The Howrah Municipal Corporation & Ors.**

*Mr. Debabrata Ray,
Mr. Soumik Mondal,
Ms. S. Mukhopadhyay*

... for the appellant.

*Mr. Sandipan Banerjee,
Mr. Ankit Sureka,
Mr. Sovan Mazumdar,*

... for the HMC.

*Mr. Shebatee Datta,
Mr. Poulami Roy,*

... for the respondent nos. 8 to 10.

In Re: CAN 1 of 2023 in MAT 1997 of 2022

This is an application for condonation of delay of 89 days in filing the appeal as noted by the Additional Stamp Reporter.

Causes shown being sufficient, we condone the delay.

CAN No. 1 of 2023 is, thus, allowed.

In Re: MAT 1997 of 2022 with CAN 2 of 2023

Affidavit of service filed in court today be kept with the records.

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

A judgment and order dated August 18, 2022, whereby the writ petition of the private respondents in this

appeal, being No. WPA 19875 of 2021 was disposed of, is the subject matter of challenge in the present appeal.

It appears that in the year 2016, the present appellant had approached a learned Single Judge of this Court by filing WP No. 10542 (W) of 2016 (Gopal Chandra Addy-vs.-State of West Bengal & Ors.), with the case that the private respondents in this appeal were making unauthorized construction but the Howrah Municipal Corporation (in short the 'Corporation') was not taking any action despite a complaint being lodged with them. The learned Judge disposed of the writ petition recording the following:-

“The private respondents say that they have already submitted the revised plan, which is under consideration of the Corporation but could not apprise the Court whether the order of demolition passed by the Corporation has been put on hold or kept in suspended animation.

The Municipal Authority has to take a decision either to proceed with the demolition of the case or otherwise and cannot sit idle for all time to come.

This Court, therefore, directs the Municipal Commissioner, Howrah Municipal Corporation to see that the order of demolition is implemented with full force and rigour unless interdicted by any subsequent decision. The entire exercise should be completed within four weeks from date.”

Subsequently, the present appellant filed a contempt application being No. CPAN 719 of 2017 for alleged willful violation of the aforesaid order dated February 17, 2017 by the Commissioner of the Corporation. On such contempt application the Commissioner of the Corporation submitted that pursuant to the order dated February 17, 2017, steps for

demolition had been taken on February 4 and 5, 2019. The unauthorized construction was partly demolished. At that juncture, the Corporation received a notice from the private respondents in the earlier writ petition who are the private respondents in this appeal also, that an application for recalling of the order dated February 17, 2017 had been filed.

The learned Judge recorded that there was no such recalling application on record. Therefore, there could be no fetter on the part of the alleged contemnor (Commissioner of the Corporation) in proceeding to comply with the order dated February 17, 2017. The learned Judge directed the alleged contemnor to proceed with the demolition of unauthorized construction immediately and to file a compliance report on the next date. The contempt application is still pending before the learned Judge.

The present round of litigation started with the filing of WPA 19875 of 2021 by the private respondents in this appeal. Their grievance before the learned Single Judge was that although the entire unauthorized construction had been removed by the Corporation, on the insistence of the private respondent in the writ petition (who is the appellant herein), the officers and workers from the Corporation repeatedly visited the premises in question and tried to effect further demolition which would cause the entire building, about 100 years old, to collapse.

Before the learned Single Judge a report was filed by the Corporation. The learned Judge noticed from the report that the unauthorized portion of the premises in question

has been demolished and “at present it is not possible for demolishing the other portions, which are unauthorized as further demolition may cause the existing old building to collapse”. The learned Judge disposed of the writ petition with the following observations:-

“The report mentions that the building in question is more than 100 years old. Retention fees for deviation have been paid by the petitioners. But as the unauthorised portion has already been demolished, accordingly, the Corporation intends to refund the retention fees to the petitioners.

The Corporation has already executed the order of demolition to the extent it is possible and there is no further scope of demolition of the portions that are remaining in the said premises.

The petitioners will be at liberty to take refund of the amount of Rs.82,818/- which was paid by the petitioners seeking for retaining the unauthorised construction.

The petitioners will be at liberty to apply for necessary permission for repairing the existing structure before the Howrah Municipal Corporation”.

Being aggrieved, the private respondent in the writ petition has come up by way of this appeal.

One of the primary grievances of the appellant herein, not touching upon the merits of the case on which also submission has been made, is that, copy of the report that the Corporation filed before the learned Single Judge was not made available to learned Advocate for the appellant herein prior to the impugned order being passed. The appellant says that he did not get an opportunity of dealing with the report of the Corporation which is against his interest.

We are of the view that the appellant may have a legitimate grievance. On the basis of the appellant's complaint, demolition proceedings were initiated and demolition to a large extent has also taken place. The Corporation's stand in the report filed before the learned Single Judge appears to be that the unauthorized construction that remains cannot be demolished without jeopardizing the entire structure. The appellant wishes to contradict such stand.

Only on the ground that the appellant should be afforded an opportunity of dealing with the report of the Corporation on the basis whereof the impugned order was passed, this matter is remanded to the learned Single Judge to decide the writ petition afresh. The order under appeal is set aside.

The appellant will be at liberty to file his exception to the report of the Corporation, a copy whereof he says he has been able to obtain after disposal of the writ petition. Let such exception by way of affidavit be filed within one week after the summer vacation, with advance copy to the learned Advocate on record for the Corporation and the writ petitioners, who will be at liberty to file their replies to such exception within a week thereafter. We make it clear that we have not gone into the merits of the dispute between the parties. The learned Single Judge having determination to hear the writ petition is requested to decide the writ petition afresh without being influenced by any observation in this order.

We further clarify that since the contempt application has no connection with the present writ petition, nothing in the present proceedings will have any bearing on the contempt application.

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

The appeal and the connected application are, accordingly, disposed of.

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

(Apurba Sinha Ray, J.) (Arijit Banerjee, J.)