

10.01.2023
Item No.12.
Court No.6.
AB

M.A.T. 2049 of 2022
With
I A CAN 1 of 2022
I A CAN 2 of 2022

Sahida Begum & Others
Vs
Howrah Municipal Corporation & Others

Mr. Tarique Quashauddin
Mr. Abbas Ibrahim Khan,
Ms. Meena Shabnam ...for the Appellants.

Mr. Sandipan Banerjee,
Mr. Sobhan Majumdar,
Mr. Ankit Sureka ...for the H.M.C.

Mr. Debabrata Rayfor the Respondent No.8.

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

In re : IA CAN 2 of 2022

This is an application for condonation of delay of 126 days in filing the appeal. Causes shown being sufficient, the delay is condoned.

I A CAN 2 of 2022 is, accordingly, disposed of.

In re : MAT 2049 of 2022, IA CAN 1 of 2022

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

This is an appeal against a judgment and order dated July 18, 2022, whereby WPA No.4607 of 2020 was disposed of.

The appellants were private respondents in the writ petition. The writ petitioners approached the

learned Single Judge alleging that the appellants had made unauthorized construction in deviation from the building plan, which was sanctioned by the Howrah Municipal Corporation (in short “HMC”). When the building plan was sanctioned, undisputedly the property in question was within the territorial limits of HMC. As of date, the property is within the territorial limits of Bally Municipality. The learned Judge noted that Bally Municipality has not inspected the property and there is no report from that Municipality as to whether or not there is any deviation from the sanctioned plan in making construction. The learned Judge disposed of the writ petition observing as follows:

“In view of the above, the Administrator, Bally Municipality is directed to conduct a fresh inspection of the property in question to ascertain the nature and extent of deviation, if any, upon giving prior notice to all the necessary parties within a period of four months from the date of communication of this order. The Administrator, Bally Municipality shall pass a reasoned order and communicate the same to all the parties immediately thereafter. In the event unauthorized construction is detected, then necessary steps shall be taken to deal with the same in accordance with law.

Learned advocate for the petitioner is directed to forward all the necessary documents to the Administrator of the Bally Municipality in support of his prayer.

The Howrah Municipal Corporation is also directed to forward all documents in connection with the aforesaid property to the office of the Bally

Municipality positively within a period of three weeks from date.”

Being aggrieved, the private respondents have come up by way of this appeal.

At the outset, Mr. Banerjee, learned Advocate appearing for Bally Municipality says that the order of the learned Single Judge has been worked out. Inspection of the property was held. Hearing has also been held wherein the appellants participated. The Competent Authority of the Municipality has passed an order of demolition. Hence, the appeal has become infructuous. If at all, the appellants have a fresh cause of action by reason of the demolition order having been passed.

Learned Advocate for the appellants raises a point of law. He says that Bally Municipality could not have considered the question of deviation, if any, from the building plan, which was sanctioned by HMC. Hence, the order under appeal is bad.

Having considered the rival contentions of the parties, we agree with Mr. Banerjee that the appeal has become infructuous. The order assailed before us has already been implemented. Today, if at all, the appellants would have a fresh cause of action. They would be at liberty to challenge the demolition order in accordance with law before the appropriate forum. Before such forum, the appellants would be at liberty to urge all points of law and facts including the point

that Bally Municipality could not have considered the question of deviation from a building plan that was sanctioned by the HMC. All points, therefore, remain open for consideration by the forum, which may be approached by the appellants challenging the demolition order.

Just to grant breathing space to the appellants, we direct that the demolition order shall not be given effect to for a period of six weeks from date to enable the appellants to challenge the same before the appropriate forum.

We further clarify that in the event the appellants are not able to obtain an interim order from the appellate forum, the Municipality would be at liberty to implement the order of demolition.

The appellants shall file the statutory appeal within a week from date. If so done, the Appellate Court is requested to consider the issue of interim relief expeditiously, in accordance with law and decide the issue of interim relief within a month from filing of the application for interim relief.

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.2049 of 2022 is, accordingly, disposed of along with IA CAN 1 of 2022.

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.)