

18.04.2023
Item No.10.
Court No.6.
AB

**M.A.T. 2074 of 2022
With
I A CAN 1 of 2023**

**Hafizul Haque @ Haziul Mondal & Ors.
Vs
B. N. Homes Properties Pvt. Ltd. & Ors.**

Mr. A. K. Routh,
Ms. Ananya Mondal ...for the Appellants.

Mr. Anirban Dasfor the Respondent No.1.

Mr. Sirsanya Bandopadhyay,
Mr. Tirthankar Dey,
Mr. Arka Kr. Nag
Mr. Souvik Naiyafor the Corporation.

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

A judgment and order dated December 5, 2022, whereby the writ petition of the private respondents herein was disposed of, is under challenge in this appeal.

The writ petitioners had approached the learned Single Judge with the complaint that the respondent nos.8 to 10 in the writ petition had made illegal and unauthorized construction. There was no sanction from Bidhannagar Municipal Corporation for such construction. The representation filed by the writ petitioners was not receiving the attention of the Corporation.

The learned Judge disposed of the writ petition by directing the Commissioner of the Corporation to consider and dispose of the representation after giving opportunity of hearing to all concerned parties. A reasoned order was directed to be passed. It was further directed that in the event, the Commissioner was of the opinion that construction had been made by the private respondents in the writ petition, either in violation of the sanctioned plan or without any sanctioned plan, then necessary steps shall be taken to deal with such unauthorized construction, in accordance with law. It was further clarified that the Commissioner of the Corporation shall restrict the consideration of the representation with regard to unauthorized construction only and shall not enter into or decide any private dispute between the parties regarding right, title and interest in respect of the land in question.

Being aggrieved, the private respondents in the writ petition are in appeal before us.

We have heard learned Counsel for the parties. Learned Advocate for the appellants submitted that the appellants were not permitted to produce the sanctioned plan and completion certificate before the learned Single Judge. The Corporation has also not issued any notice of hearing to the appellants. The order under appeal should be set aside.

We do not see any reason to interfere with the order, which is really innocuous. The issue, whether or not the appellants have made unauthorized construction, has been referred by the learned Single Judge to the Commissioner of Bidhannagar Municipal Corporation with certain directions, which we have noted above. We, however, clarify that the Commissioner shall afford sufficient opportunity of hearing to the appellants as well as private respondents herein or their authorized representatives and permit them to produce all documents that they may wish to rely upon. Apart from this, we make no other comment.

The order impugned does not warrant any interference.

Since the Commissioner of the Corporation is to decide the issue of unauthorized construction in terms of the learned Single Judge's order as affirmed by us, no coercive steps should be taken against the impugned construction till the Commissioner decides the matter.

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. 2074 of 2022 is, accordingly, disposed of along with CAN 1 of 2023.

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.)