

D/L
Item No. 06
20.12.2023
KOLE

**MAT 2433 of 2023
With
IA CAN 1 of 2023**

**Mammu Jaiswal alias Shambhu Nath Shaw
-Vs.-
Ramesh Kumar Jaiswal & Ors.**

*Mr. Manas Kr. Ghosh,
Mr. S. Dey (Basu),*

...for the appellant.

*Mr. Sayon Sinha,
Mr. A. Ganguly,*

...for the respondent no. 1.

*Mr. Sandipan Banerjee,
Mr. A. Sureka,
Mr. S. Majumdar,*

...for the HMC.

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

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

This appeal is directed against an order dated November 23, 2023, passed by a learned Judge of this Court on a writ application filed by the respondent no. 1 herein, being WPA 22361 of 2022. The writ petition is still pending before the learned Judge.

Allegedly, unauthorized construction has been made by the appellant herein, who is the private respondent in the writ petition.

It was submitted before the learned Single Judge on behalf of Howrah Municipal Corporation (in short 'the HMC') that demolition had started on November 3, 2023 and thereafter from November 5, 2023 to November 9,

2023, demolition work was carried on and some part of the building in question has already been demolished. Further demolition work will be taken up by the Corporation.

The learned Judge directed the Municipality (to be read as “the Corporation”) “to come up with the photographs in the form of an affidavit stating that in the said premises the demolition work has been done to some extent and on the next date the Municipal Corporation shall file one report as to the demolition of the other part of the unauthorized construction.” The matter was directed to be listed again on December 14, 2023.

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

Learned Advocate for the appellant says that firstly, no notice of the writ petition was served on the appellant. Secondly, no hearing was given to the appellant who is the developer and person responsible, before any alleged demolition order was passed. Thirdly, as per his instructions, there is no demolition order at all.

Mr. Banerjee, learned Advocate, representing the HMC denies and disputes the submissions made on behalf of the appellant. He however, in his usual fairness, upon construction, says that no inspection of the property in question was held by HMC. Hearing was held and self-demolition order was passed.

Learned Advocate for the respondent/writ petitioner denies and disputes that no notice of the writ petition was

served on the appellant. He says that duly affirmed affidavit of service was filed before the learned Single Judge.

We are at a loss to understand how a demolition order, albeit self-demolition order could be passed by the Corporation without there being a local inspection of the alleged unauthorized construction. This omission on the part of the Corporation Authorities goes to the root of the matter. Any self-demolition order that may have been passed in respect of premises No. 4/1 G.T. Road (S), Howrah-711101, cannot be sustained and the same is hereby set aside. No further effect shall be given to such demolition order.

The HMC shall start *de novo* proceedings in respect of the alleged unauthorized construction, in accordance with law, observing the principles of natural justice, and HMC will take a fresh decision in the matter after hearing all concerned parties. Such proceedings should be initiated and completed as expeditiously as possible.

Learned Advocates for the parties say that no useful purpose will be served by keeping the writ petition pending. The writ petition, being no. WPA 22361 of 2022, is treated as withdrawn to this Bench and as on day's list and is disposed of.

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.

(Arijit Banerjee, J.)

(M. V. Muralidaran, J.)