

03. 22.12.2023
Court No.6
Tanmoy Ghosh

MAT 2488 of 2023

**Sanatan Dharma Prachirini Sahba and Sree Sree
Nagendra Math Sabha & Anr.**

-Versus-

AND Infra Development Private Limited & Ors.

With

IA No: CAN/1/2023

Mr. Aniruddha Mitra, Adv.,
Mr. Dhilon Sengupta, Adv.,
Mr. Sudipta Mahapatra, Adv.

...for the appellants.

Mr. Abhratosh Majumdar, Ld. Sr. Adv.,
Mr. Sayan Sinha, Adv.,
Mr. Adil Naser, Adv.,
Mr. K. Roy, Adv.

...for the respondent nos. 1 & 2/
writ petitioners.

Mr. Alok Kumar Ghosh, Adv.,
Mr. Gopal Chandra Das, Adv.

...for Kolkata Municipal Corporation.

Mr. Debjit Mukherjee, Adv.,
Ms. Tanuja Basak, Adv.

...for the State respondents.

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

This appeal is directed against a judgment and order dated December 15, 2023, passed by a learned Judge of this Court in WPA 21692 of 2023, being a writ petition filed by the respondent nos. 1 and 2 herein.

By the order impugned, the learned Judge has directed implementation of a notice dated September 14, 2023, issued by Kolkata Municipal Corporation (in short,

'KMC') to the person responsible being the appellants herein, for removing the construction put up on a public footpath. The respondent nos.1 and 2 had approached the learned Single Judge with the grievance that such construction was illegal, not backed by any sanctioned plan and was also obstructing the ingress to and egress from the premises of the writ petitioners.

The learned Judge passed the following order:-

"Three engineers of the Corporation have made a written communication to the Officer-in-Charge, Narkeldanga Police Station on September 14, 2023 that no permission was granted for construction of the temple.

The Court is of the opinion that there can be no settlement with regard to an unauthorized construction encroaching the public footpath. Notice has already been issued for demolition of the same. The persons responsible are bound to act in accordance with the said notice.

As the time to remove the offending structure has expired long back and the structure has not been removed as yet, it will be open for the Corporation to demolish the said structure and recover the cost of demolition from the persons responsible for making the unauthorized construction. Steps shall be taken at the earliest but positively by December 31, 2023.

Being aggrieved, the respondent nos. 12 and 13 in the writ petition have come up by way of this appeal.

After we heard the matter for some time, Mr. Mitra, learned Advocate appearing for the appellants, on instruction submits that the appellants would themselves remove the impugned construction if some time is granted to them.

Mr. Majumdar, learned Senior Advocate appearing for the respondent nos.1 and 2/writ petitioners and Mr.

Ghosh, learned senior Counsel appearing for KMC, both have no objection to such suggestion.

The order under appeal is modified to the aforesaid extent. No useful purpose will be served by keeping the appeal pending.

Since we have not called for affidavits, the allegations in the stay petition shall be deemed not to have been admitted by the respondents.

The appeal being MAT 2488 of 2023 and the connected application being IA No: CAN/1/2023 are disposed of.

Urgent photostat certified copy of this order, if applied for, be made available to the parties, upon compliance with all requisite formalities.

(Arijit Banerjee, J.)

(M.V. Muralidaran, J.)