

Item-
SL(1)-1. 01-03-2024

sg Ct. 8

MAT 3 of 2024
CAN 1 of 2024

Sanjay Kumar Saha
Versus
Nirmal Kanti Dey & Ors.

Mr. Surajit Nath Mitra, Sr. Adv.
Mr. Shayak Mitra, Adv.
Mr. Prithish Chandra, Adv.
...for the appellants
Mr. Sandipan Banerjee, Adv.
Ms. Ankit Sureka, Adv.
...for Howrah Municipal Corporation

1. The appeal and the application have been assigned to this Bench by the Hon'ble the Chief Justice on 1st March, 2024. Consequent thereupon, this matter is listed in the Supplementary List and taken up for hearing.
2. In spite of service, the writ petitioners are not represented. It appears that one Mr. K. Dey has received the notice on behalf of the writ petitioners.
3. On our request, Mr. Debjit Mukherjee, learned Counsel appears and submits that he has given a change to the writ petitioners yesterday as they are not willing to engage Mr. Mukherjee any further in this matter.
4. The appellant is the developer who could not be served at the time of hearing of the writ petition as he was not found in the premises when an attempt was made by the writ petitioners to serve a notice of hearing of the writ petition upon the said developer.
5. Mr. S.N. Mitra, learned Senior Counsel appearing on behalf of Sri Sanjay Kumar Saha, namely the developer, has submitted that the respondent no.5 is not residing in the said

premises and has drawn our attention to the cause title where the present address of the respondent no.5/appellant is indicated.

6. The order passed by the learned Single Judge is with regard to the demolition of the unauthorized construction.
7. The learned Counsel for the Howrah Municipal Corporation has submitted that some of the floors constructed are found to be unauthorized as they are beyond the sanctioned plan. There may be further deviation to which he could not presently recollect.
8. The learned Single Judge while disposing of the writ petition has observed that if there are any procedural defects then steps shall be taken to conclude the same in accordance with law.
9. This appeal was taken up urgently as it is submitted that Corporation is proceeding with the demolition without giving an opportunity of hearing to the appellant.
10. The learned Counsel for the Corporation has admitted that the respondent no.5, the developer, was not heard. In fact, the appellant could not be said to be aggrieved by the order passed by the learned Single Judge since the interest of the appellant has been adequately safeguarded as the demolition initiated could not be implemented without removing the procedural lapses.
11. However, having regard to the fact that the proceeding has been initiated for demolition without hearing the developer, who is likely to be affected by the demolition and the fact that partial demolition has already taken place, we feel that

the Corporation shall not proceed further without curing the procedural lapses as rightly pointed out by the learned Single Judge.

12. In view of the fact that the respondent no.5 is a developer, the said respondent should be aware of the persons to whom different floors and flats have been sold and accordingly, it would be responsibility of the appellant to communicate this order to the prospective buyers/occupiers of the floors which are declared to be unauthorized and they will be entitled to represent their case in the hearing to be held in terms of this order. The respondent no.5 is aware of the prospective buyers/occupiers of the alleged unauthorized portion and accordingly, it will be the responsibility of the respondent no.5 to inform those persons and/or occupiers and/or buyers who would be affected by the order of demolition.

13. To avoid any future complication, the Howrah Municipal Corporation is directed to affix a copy of this order along with a copy of order of demolition on conspicuous places of the premises in question by 5th March, 2024.

14. Mr. Sandipan Banerjee, learned Counsel appearing on behalf of the Howrah Municipal Corporation has submitted that the Assistant Engineer-in-Charge, Building Department, is the competent authority to hear and decide the demolition case.

15. We request the Assistant Engineer-in-Charge, Building Department to hear the objections on 14th March, 2024 at 12 noon of the persons likely to be affected by the order of demolition. All the affected person shall be entitled to file their representations/objections on or before 11th March,

2024 before the Assistant Engineer-in-Charge, Building Department.

16. We make it clear that in the event the appellant or any of the occupants and/or prospective flat owners are not represented on that date, it shall be presumed that they are not interested to contest the demolition proceeding and later on they shall not be allowed to raise any objection due to lack of notice.
17. The Corporation shall communicate this order to the writ petitioners by 6th March, 2024. The writ petitioners shall also be entitled to participate in the said proceeding.
18. In view of the admitted fact that there has been some procedural lapses, the demolition cannot continue, in fact, the learned Single Judge has also directed the Corporation to remove the procedural defects if any, before proceeding with the demolition.
19. In view of the aforesaid admitted position, the demolition initiated by the Corporation shall remain stayed till a fresh decision is taken by the authorities concerned.
20. A final decision shall be communicated to the parties present on the date of hearing within two weeks from the date of passing of the final order.
21. The appeal and the application are accordingly, disposed of.
However, there shall be no order as to costs.
22. Affidavit of service filed in Court today is taken on record
23. All parties shall act in terms of copy of this order downloaded from the official website of this Court.

(Hiranmay Bhattacharyya, J.)

(Soumen Sen, J.)