

14. 19.02.2024
Court No.6
(Tanmoy)

MAT 183 of 2024

Debendranath Mallick & Ors.

-Versus-

Soma Mallick & Ors.

With

IA No: CAN/1/2024

Ms. Sanghamitra Nandy, Adv.

...for the appellants.

Mr. Sounak Bhattacharya, Adv.,

Mr. Sounak Mondal, Adv.

...for the respondent no.1/
writ petitioner.

Mr. Tapan Coomaar Dey, Adv.,

Ms. Dipa Bhattacharya, Adv.

...for the State.

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

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

A judgment and order dated January 8, 2024, whereby the writ petition of the respondent no.1 herein being WPA 25521 of 2023, was disposed of by a learned Single Judge of this Court, is assailed in this appeal by the respondent nos. 7-10 in the writ petition.

It appears that the appellants herein have made unauthorized construction. An order of demolition was passed by the Board of Councillors of North Dum Dum Municipality on July 27, 2023. The respondent no.1 in this

appeal approached the learned Single Judge for implementation of the said demolition order.

The learned Judge observed that the time to implement the demolition order has expired long back. The learned Judge disposed of the writ petition with the following directions:-

“...In view of the above, the North Dum Dum Municipality is directed to take steps for demolition of the unauthorised construction for the purpose of implementation of the order dated 27th July, 2023.

The order shall be implemented at the earliest but positively by 29th February, 2024.

The Inspector-in-Charge, Narayanpur Police Station is directed to provide adequate police protection and render all necessary help and assistance to the men and agents of the North Dum Dum Municipality at the time of implementing the order of demolition...”

Being aggrieved, the respondent nos. 7-10 in the writ petition have come up by way of this appeal.

Ms. Nandy, learned Advocate appearing for the appellants, says that the writ petitioner is their relative and they both own shares in an ancestral property. The appellants say that the writ petitioner has also made unauthorized construction in the said property. The demolition order in question covers unauthorized construction made by both the appellants and the writ petitioner.

Mr. Bhattacharya, learned Advocate for the respondent no.1 herein/writ petitioner, says that he has no objection if in the process of implementation of the

demolition order the unauthorized construction put up by the writ petitioner is also demolished.

We enquired of Ms. Nandy whether her clients have challenged the demolition order before any appropriate forum. She says that no such challenge has yet been thrown but she has advised the appellants to prefer statutory appeal against the demolition order under Section 218(3) of the West Bengal Municipal Act, 1993.

We see no apparent infirmity in the order under appeal. Since the demolition order has not been upset by any competent forum, the learned Single Judge rightly directed implementation thereof.

However, in view of the fact that the property in question is residential in nature, taking a lenient view, we permit the appellants to approach the statutory appellate forum assailing the demolition order issued by the Municipality. For a period of four weeks from date, the Municipality shall not give effect to the demolition order. If within the said period of four weeks the appellants are unable to obtain any *interim* protective order from the appellate forum, the Municipality shall forthwith proceed to execute the demolition order.

We have not gone into the merits of this case. If any statutory appeal is preferred by the appellants herein, the appellate forum shall decide the same in accordance with law, without being influenced by any observation made in

this order or in the order of the learned Single Judge impugned before us.

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

The appeal being MAT 183 of 2024 and the connected application being IA No: CAN/1/2024 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.)