

05. 19.03.2024
Court No.6
(Tanmoy)

FMA/381/2024

**SIMA SAHA
VS
BISWAJIT PODDER AND ORS.
WITH
IA NO: CAN/1/2024**

Mr. Mahendra Prasad Gupta, Adv.,
Mr. Ayan Mitra, Adv.,
Ms. Antara Panja, Adv.,
Mr. Sartak Singh, Adv.

...for the appellant.

Mr. Prasenjit Burman, Adv.

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

Mr. Sandipan Banerjee, Adv.,
Mr. Ankit Sureka, Adv.,
Ms. Shetparna Ray, Adv.

...for Howrah Municipal
Corporation.

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 together for hearing.

A judgment and order dated January 11, 2024,
whereby the writ petition of the respondent no.1 herein
being WPA 914 of 2024, was disposed of by a learned
Judge of this Court, is under challenge in this appeal at
the instance of the respondent no.6 in the writ petition.

It appears that in an earlier round of litigation, the
present appellant approached a learned Judge of this
Court by filing WPA 4552 of 2023, with the grievance

that Howrah Municipal Corporation (in short, 'HMC') was not taking any steps on the basis of complaint made by her to the effect that the private respondents in the said writ petition including the present writ petitioner had made unauthorized construction. The said writ petition was disposed of by the learned Judge by a judgment and order dated April 17, 2023, the operative portion whereof reads as follows:-

“The writ petition is accordingly disposed of by directing the respondent no.2 being the Commissioner, Howrah Municipal Corporation or his delegate to consider and dispose of the representation made by the petitioner strictly in accordance with law, after giving an opportunity of hearing to all the necessary parties including the petitioner within a period of three months from the date of communication of a copy of this order. The said respondent shall pass a reasoned order and communicate the same to all the necessary parties including the petitioner immediately thereafter.

In the event the aforesaid respondent is of the considered opinion that the construction has been made either in violation of the plan sanctioned or devoid the sanction plan, then necessary steps shall be taken to deal with such unauthorized construction, in accordance with law.

The aforesaid respondent shall restrict the consideration of the representation with regard to unauthorized construction only and not enter into or decide any private dispute of the parties regarding right, title and interest in respect of the aforesaid land.

It is made clear that this Court has not entered into the merits of the claim made by the petitioner and all points are left open to be decided by the aforesaid respondent at the time of consideration of the representation of the petitioner.”

It appears that pursuant to the aforesaid order, the Competent Authority in HMC held hearing and an order of demolition was passed on December 6, 2023. Challenging such demolition order, the private respondent herein approached the learned Single Judge in the present round of litigation.

The learned Judge noted from the sanctioned plan produced by the writ petitioner that the sanction was for construction of a G+4-storeyed building. Therefore, the stand of the Corporation that an extra floor had been constructed is not acceptable since the impugned construction is a G+4-storeyed building. The learned Judge set aside the order of demolition. The learned Judge disposed of the writ petition with the following observations and directions:-

“The Court has heard the submissions made on behalf of the petitioner and the Corporation and as it prima facie appears that the plan was sanctioned for construction of G+4 floors, accordingly, the finding of the Corporation that an additional floor was constructed unauthorizedly, appears to be incorrect.

To ascertain the exact area of unauthorized construction, a fresh spot inspection is required to be conducted upon prior notice to all the necessary parties. The Corporation is directed to forward the spot inspection report to the petitioner and the complainant. The details of the unauthorized construction shall be mentioned in the spot inspection report. Thereafter, an opportunity of hearing shall be granted to the parties for placing their respective stand before the Corporation.

If ultimately it transpires that there is any unauthorized construction, the Corporation shall take steps to deal with the same in accordance with law.

The Corporation shall endeavour to conclude the proceeding at the earliest, but positively within a period of twelve weeks from the date of communication of this order.”

Being aggrieved, the respondent no.6 in the writ petition has come up by way of this appeal.

Learned Advocate for the appellant says that the writ petition was disposed of without even service of a copy of the writ petition on the appellant herein. After all, the demolition order was passed in proceedings initiated on the basis of the complaint lodged by the appellant herein. The appellant should have been granted an audience by the learned Single Judge prior to disposing of the writ petition particularly when the order of demolition was being set aside.

We appreciate the submission made on behalf of the appellant. Ideally, she should have been heard before the writ petition was disposed of. However, considering the nature of the order passed by the learned Single Judge, we do not think any substantial prejudice has been caused to the appellant. The appellant will have every opportunity of participating in the proceedings before HMC and drawing to the attention of the Competent Authority any deviation from the sanctioned plan in respect of the impugned construction.

Learned Advocate for the appellant complains that although more than two months have passed from the

date of the order of the learned Single Judge, no spot inspection has as yet been made as was directed by the learned Judge. We find that the learned Judge granted three months' time to the Corporation to complete the entire exercise. However, it is surprising that even after expiry of more than two months since the learned Judge passed the impugned order, even spot inspection has not been held. Let such inspection be held at the earliest upon notice to all concerned parties so that they can be present if they so wish. Thereafter, hearing be granted to the concerned parties and further action be taken by HMC if any unauthorized construction is found or any construction in deviation from the sanctioned plan is found, in accordance with law. The entire exercise should be completed by the end of April, 2024.

The private respondent/writ petitioner shall not undertake any further construction excepting in accordance with any sanctioned plan, till a final decision is taken by HMC in the matter.

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 FMA 381/2024 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.)