

19. 05.04.2024
Court No.6
(Tanmoy)

MAT/382/2024

Fazlur Rahaman

-Versus-

**The Secretary, Newtown Kolkata Action Area IIIC
Residents' Cultural Association Ors.**

With

IA No: CAN/3/2024

Mr. Biswaroop Bhattacharya, Adv.,
Mr. Arijit Dey, Adv.,
Mr. Rajdeep Bhattacharya, Adv.,
Mr. Debapratim Guha, Adv.,
Ms. Archita Sarkar, Adv.

...for the appellant.

Mr. Jaydip Kar, Ld. Sr. Adv.,
Mr. Billwadal Bhattacharyya, Adv.,
Mr. Suryaneel Das, Adv.,
Mr. Chiranjit Pal, Adv.

...for the respondents/
writ petitioners.

Mr. Abhratosh Majumdar, Ld. Sr. Adv.,
Mr. Chayan Gupta, Adv.,
Mr. Sandip Dasgupta, Adv.,
Mr. Ratul Das, Adv.

...for WBHIDCO.

Mr. Suddhasatva Banerjee, Adv.,
Mr. Aritra Basu, Adv.,
Mr. Saaqib Siddiqui, Adv.

...for NKDA.

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

The appellant was not a party to the writ petition being WPA 22735 of 2023, which was disposed of by a learned Single Judge by a judgment and order dated January 8, 2024, which is impugned in this appeal. We have granted leave to the appellant to prefer this appeal.

The learned Judge has directed New Town Kolkata Development Authority (in short, 'NKDA') to take prompt necessary steps to deal with the alleged unauthorized construction complained of by the writ petitioners, in accordance with law at the earliest, but positively within a period of twelve weeks from the date of communication of the order. The Commissioner of Police, Bidhannagar Police Commissionerate, has been directed to render adequate Police protection and all necessary assistance and co-operation to the men and agents of NKDA at the time of implementation of the demolition order.

The appellant says that he is the *Mutwalli* of the Wakaf estate which has put up some temporary structures on the land in question. The writ petitioners should have impleaded him in the writ petition so that he would have had a chance to explain to the learned Single Judge that nothing illegal has been done.

There is serious dispute as regards the ownership of the land on which the alleged unauthorized structures have been made. The Writ Court cannot go into such disputed question of title, nor can NKDA. All that NKDA or the Writ Court can look into is as to whether the impugned structure is unauthorized or not. The writ petitioners, West Bengal Housing Infrastructure Development Authority (in short, 'WBHIDCO') and NKDA say that such structures are illegal. The appellant says they are not illegal.

We are of the view that the appellant should have an opportunity of being heard by the learned Single Judge and for that purpose only, keeping in mind the importance of the principles of natural justice which have now been recognized as part of Article 14 of the Constitution, without entering into the merits of the case, we remand the matter back to the learned Single Judge having determination in the matter to hear the matter afresh after affording an opportunity of hearing to the appellant herein.

The order under appeal is, therefore, set aside. The writ petition stands restored. The appellant herein is impleaded as a party-respondent in the writ petition. Learned Advocate-on-Record for the writ petitioners shall make appropriate amendment to the cause title of the writ petition to add the appellant herein as a party. The added respondent and the other respondents in the writ petition would be at liberty to file affidavit-in-opposition before the learned Single Judge within a fortnight from date (19.04.2024). Reply thereto, if any, be filed by the writ petitioners within a week thereafter (26.04.2024).

The parties would be at liberty to mention the matter before the learned Judge after exchange of affidavits or after expiry of the period granted for filing of affidavits.

Clarifying that we have not touched the merits of the dispute between the parties, we dispose of the appeal being MAT/382/2024 and the connected application being IA No: CAN/3/2024. We, however, restrain the appellant herein

whom we have added as a party-respondent to the writ petition or his associates, from using the impugned structure or any portion of the land on which such structure is put up in any manner, till the learned Single Judge considers the matter afresh and passes further orders. The respondent nos. 7 and 8 herein being the Commissioner of Police, Bidhannagar Police Commissionerate and the Inspector-in-Charge, Techno City Police Station, are directed to ensure that this order of injunction is strictly implemented.

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.)