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20-03-2024
(Ct. no.06)
debajyoti

**IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
APPELLATE SIDE**

**MAT 389 of 2024
+
IA NO:CAN/1/2024**

**Manju Devi Shaw & Anr.
Vs.
The State of West Bengal & Ors.**

Mr. Ayan Banerjee,
Mr. D. Chakraborty,
Mr. J. Chakraborty,
Mr. S. Dinda,
Mr. R. Malakar
... For the Appellants.

Mr. Malay Krishna De,
Mr. Munshi Mijanur Rahaman
... For the State.

Ms. Mekhla Sinha,
Ms. Malabika Roy Dey
... For Howrah Zilla Parishad.

Mr. Animesh Paul
... For Respondent No.5/Writ
Petitioner.

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

A judgment and order dated February 05, 2024,
whereby the writ petition of the respondent no.5
herein, being WPA 16197 of 2023, was disposed of by
a learned Judge of this Court, is the subject matter of
challenge in this appeal, filed at the instance of the
private respondents in the writ petition.

It appears that the District Engineer, Howrah
Zilla Parishad, passed an order on May 02, 2023, for

demolition of unauthorized construction made by the private respondents in the writ petition, who are the appellants herein.

Alleging inaction on the part of the concerned authority for implementing the demolition order, the writ petitioner approached the learned Single Judge. Before the learned Judge, it was submitted by the Zilla Parishad that the private respondents had been directed to demolish the unauthorized structure and it was the duty of the private respondents to demolish the structure. The Zilla Parishad was unable to implement the order by reason of financial crunch.

On behalf of the private respondents in the writ petition, it was submitted that a title suit is pending before the competent court between Bishwajit Ghosh and Madhu Devi Shaw (appellant no.2 herein) being Title Suit No.767 of 2023 in respect of the same plot of land where the order of demolition is to be implemented.

The learned Judge disposed of the writ petition with the following observations and directions:

“ No order has been placed before this Court restraining the Howrah Zilla Parishad from executing the order of demolition passed on 2nd May, 2023. The aforesaid Title Suit is in connection with landlord and tenant dispute. Bishwajit Ghosh filed the said Suit against one Manju Devi Shaw. In the present writ petition, Bishwajit Ghosh is not a party. Manju Devi Shaw has, however, been arrayed as respondent No. 6 in the writ petition.

As it appears that the private respondents have failed and neglected to take steps for acting in accordance with the order of demolition passed by the Howrah Zilla Parishad, accordingly, the Howrah Zilla Parishad is directed to

execute the order of demolition and recover the cost of demolition from the private respondents. An unauthorized construction cannot be permitted to be retained on account of pendency of a Title Suit.

The Inspector-in-Charge, Sankrail P.S. is directed to render all necessary help and cooperation to the men and agents of the Howrah Zilla Parishad in executing the order of demolition. The order of demolition shall be executed at the earliest but positively within a period of sixty days from the date of communication of this order. ”

Being aggrieved, the private respondents in the writ petition have come up by way of this appeal.

Mr. Ayan Banerjee, learned advocate, appearing for the appellants, says that the appellants had applied to the concerned Panchayat for sanction of a building plan. The Panchayat recommended and forwarded such draft plan to the Zilla Parishad for approval and sanction. The Panchayat also collected the building fees from the appellants. Under the applicable rules, the Zilla Parishad was required to either reject the application for sanction or allow the same within thirty days from the date of receipt of the draft plan. The Zilla Parishad sat tight over the matter and did nothing. As a result, there was deemed sanction of the draft building plan as provided in Rule 30 of the West Bengal Panchayat (Gram Panchayat Administration) Rules, 2004.

Mr. Banerjee submitted that this point was not considered by the Zilla Parishad while passing the demolition order.

We have not called upon the respondents to make submission.

The appellants may well have a point. However, the fact remains that the appellants have not challenged the demolition order before any competent forum. The demolition order, therefore, as of date, remains valid and the learned Single Judge merely directed implementation of that order. It is not that the learned Judge passed the demolition order. Had that been the case, perhaps we might have intervened. The only option that remains with the appellants is to challenge the demolition order before the appropriate forum, if they are entitled to do so in law.

We see no infirmity in the order under appeal. The appeal and the connected application, accordingly, fail and are dismissed. This will not prevent the appellants from assailing the demolition order before the appropriate forum if they are entitled to do so in law. All points are left open for the appellants to argue before the appropriate forum.

Affidavits not having been called for, the allegations in the stay petition, shall be deemed not to have been admitted by the respondents.

All parties shall act on the server copies of this order duly downloaded from the official *website* of this Court.

Urgent photostat certified copies of this order, if applied for, be supplied to the parties on compliance of all necessary formalities.

(M. V. Muralidaran, J.) (Arijit Banerjee, J.)