

D/L
Item No. 01
04.03.2024
KOLE

**MAT 410 of 2024
With
IA CAN 1 of 2024**

**Sapna Ghar & Ors.
-Vs.-
The Howrah Municipal Corporation & Ors.**

*Mr. Sumitava Chakraborty,
Mrs. Bratati Pramanica,*
...for the appellant.

*Mr. Sandipan Banerjee,
Mr. Ankit Surekha,*
...for the HMC.

Mr. Rudranil De,
...for the State.

Mr. Avirup Chatterjee,
...for the respondent nos. 8 and 9.

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

A judgment and order dated February 5, 2024, whereby the writ petition of the appellants herein being WPA 26924 of 2022, was disposed of by a learned Judge of this Court is the subject matter of challenge in this appeal.

It appears that the appellants/writ petitioners made unauthorized construction. Demolition proceeding was initiated by Howrah Municipal Corporation (in short 'the HMC'). A demolition order was passed. Challenging such order, the appellants approached the learned Single Judge.

It appears that one of the grievances ventilated by the writ petitioners before the learned Judge was that no spot inspection was held by HMC prior to issuance of the demolition order. By an order dated August 31, 2023, the

learned Judge directed spot inspection to be held upon prior notice to all necessary parties and file a report before the Court with a further direction to circulate the report amongst the parties.

When the matter came up before the learned Judge on February 5, 2024, Her Ladyship recorded that spot inspection has been conducted but the report is yet to be forwarded to the parties.

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

*“The Corporation is directed to circulate the report by 23.02.2024. Reasonable opportunity of hearing shall be granted to all necessary parties for production of necessary documents in support of their respective stands. After hearing, final order shall be passed. The entire proceeding should conclude by **28th March, 2024.**”*

The writ petition stands disposed of.

The interim order that is subsisting in the matter is extended till one week after communication of the final order.”

The interim order to the effect that “the men and agents of the HMC are directed not to take any further steps to the order of demolition, if any, passed by the Corporation, till the adjourned date”, was directed to continue till one week after passing of the final order by the HMC.

Being aggrieved, the writ petitioners have come up by way of this appeal.

Mr. Chakraborty, learned Advocate for the appellants says that the learned Judge ought to have set aside the earlier demolition order which was challenged before Her

Ladyship since the same was passed without holding any spot inspection. Further, the matter should not be remanded to the same authority as the authority may not be able to consider the matter afresh with an open mind having already issued a demolition order.

Mr. Banerjee, learned Advocate for HMC says that a new incumbent has been appointed in the post of Commissioner of HMC. He will carry out the learned Single Judge's order in due course. The report of the spot inspection is yet to be circulated amongst the parties. He says that the apprehension of the appellants that the new Commissioner will not be able to consider the matter with an unbiased mind is baseless.

We also think that there is no legitimate reason for the appellants to apprehend that the new Commissioner will be partisan in his approach. We do not find any reason to interfere with the order under appeal which sufficiently protects the interest of the appellants. If ultimately it is found that the appellants have made unauthorized construction, the same must be demolished in accordance with law.

Mr. Chakraborty, learned Advocate for the appellant, says that an application of the appellants for regularization of the alleged unauthorized construction is pending at the end of HMC. We direct HMC to dispose of such application in accordance with law by passing a reasoned order after granting an opportunity of hearing to any one of the appellants or their authorized representative within a

fortnight from the date of communication of this order to the competent authority in HMC.

We further clarify that the fresh order that the Commissioner shall pass regarding the alleged unauthorized construction raised by the appellants, shall supersede the earlier demolition order. We further extend the time period for HMC to complete the proceedings in terms of the order of the learned Single Judge till the end of April, 2024. Let the spot inspection report be circulated amongst the parties or their learned Advocates within a fortnight from date.

We further clarify that no coercive step be taken by HMC in respect of the alleged unauthorized construction till one week after the date of communication of the final order by the Commissioner of HMC to the concerned parties.

The order of the learned Single Judge stands modified to the aforesaid extent.

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

The appeal and the connected application are, accordingly, disposed of.

Urgent photostat certified copy of this order be supplied to the parties, if applied for, as early as possible.

(Arijit Banerjee, J.)

(M. V. Muralidaran, J.)