

07. 22.04.2024
Court No.6
(Tanmoy)

MAT/673/2024

**GOURI CHAKRAVARTY AND ORS.
VS
THE STATE OF WEST BENGAL AND ORS.**

**With
IA No: CAN/1/2024**

Mr. Kallol Basu, Adv.,
Mr. Dipta Dipak Banerjee, Adv.,
Mr. Diwakar Pathak, Adv.
Ms. Nilakshmi Ghosh, Adv.

...for the appellants.

Mr. Lalit Mohan Mahata, Ld. AGP,
Ms. Jyotsna Roy Mukherjee, Adv.

...for the State.

Mr. Animesh Mukherjee, Adv.

...for Suri Municipality.

Mr. Subir Sanyal, Adv.,
Mr. Ratul Biswas, Adv.,
Mr. Sourajit Mukherjee, Adv.

...for the respondent nos.12&13.

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

A Judgment and order dated March 8, 2024, whereby three writ petitions being WPA 9804 of 2021 (*Hena Chakraborty & Anr. v. The State of West Bengal & Ors.*), WPA 5286 of 2022 (*Gouri Chakravarty & Ors. v. The State of West Bengal & Ors.*) and WPA 8241 of 2020 (*Gouri Chakravarty & Ors. v. The State of West Bengal & Ors.*), were disposed of by a learned Judge of this Court, is the subject matter of challenge in this appeal filed by

the petitioners in WPA 5286 of 2022 and WPA 8241 of 2020.

The short facts of the case, insofar as the same are relevant for the present purpose, are that a property situated near the main bus stand at Suri, Birbhum, was owned by the ancestors of Hena Chakraborty (in short, 'Hena') and another and Gouri Chakravarty (in short, 'Gouri') and others. The property was partitioned in terms of a decree passed by a competent civil Court in T.S. No.56 of 1950 (Partition). The Western portion of the property was allotted to Hena and another. The Eastern portion of the property went to Gouri and others.

Hena wanted to demolish her portion of the property and construct a new building. She approached the Suri Municipality with an application dated February 22, 2020. By an order dated March 11, 2020, the Chairperson of the Municipality permitted Hena to demolish the Western portion of the property and to erect a new building. Gouri and others were aggrieved by the aforesaid order. According to them, Hena's portion could not be demolished without damaging the Eastern portion belonging to Gouri and others. Hence Gouri made a representation to the Chairperson of the Municipality in September, 2020. By an order dated December 2, 2020, the Chairperson withdrew his order dated March 11, 2020, by which he had permitted Hena to demolish her portion and construct afresh.

The order by which the Chairperson had initially permitted Hena to demolish her portion of the property, was challenged by Gouri and others by filing WPA 8241 of 2020. The order dated December 2, 2020, whereby the Chairperson of the Municipality withdrew his earlier order dated March 11, 2020, was challenged by Hena and another by filing WPA 9804 of 2021.

When the three writ applications were being heard by the learned Single Judge, the learned Judge called for an opinion from Suri Municipality as regards the feasibility of demolition of the Western portion of the property without adversely affecting the Eastern portion. A report was filed. That report came to be challenged by Gouri and others by filing WPA 5286 of 2022.

All the three writ applications were taken up for hearing and disposal together by the learned Single Judge pursuant to an order of the Division Bench dated August 31, 2022, passed in MAT 1402 of 2022.

By an order dated August 29, 2023, the learned Judge opined that neither the order dated March 11, 2020, nor the order dated December 2, 2020, withdrawing the earlier order passed by the Chairperson of the Municipality, were based on any expert report. The learned Judge was of the opinion that both the said orders are liable to be quashed and accordingly the learned Judge set aside the said orders.

Regarding the report filed by the Municipality as per the direction of the learned Judge, His Lordship was of the view that the report was too cryptic and is also liable to be quashed. The report was set aside.

The learned Judge, by the said order dated August 29, 2023, appointed a Chartered Engineer empanelled with this Court to cause an inspection of the property in question upon notice to learned Advocates for the parties and to submit a comprehensive report before the learned Judge. The relevant portion of the said order reads as follows:-

“... Since there is a common wall and a common roof, this Court is of the considered view that adequate safeguards are to be taken if at all the western portion can be allowed to be demolished in order to protect the other portion that is the eastern portion from any damage as to safety, security and structural stability of such portion. For the purpose of resolving the aforesaid dispute, this Court thinks fit and proper to appoint a technical expert who shall conduct an inspection of the property and submit a comprehensive report on the issues as to whether the western portion can be demolished without causing any damage as to the safety, security and structural stability of the eastern portion and the safeguards, if any, to be taken therefor as well as matters connected thereto which such expert may think fit and proper. This Court, therefore, appoints Mr. Asis Kumar Sen, a Chartered Engineer empanelled with the High Court of Calcutta, whose initial remuneration shall be Rs.50,000/- (Rupees Fifty-thousand) to be paid by writ petitioners in WPA 9804 of 2021, who shall cause an inspection of the property upon serving advance notice to the learned advocate on record of the respective writ petitioners as well as the learned advocate representing Suri Municipality and submit a comprehensive report before the next date fixed for hearing of the matter. It will be open to the writ petitioners and the municipality to depute their engineers at the time of inspection of the property by the Expert appointed by this Court. Parties are directed to render full co-operation to the Expert appointed

by this Court and supply copies of all necessary documents in connection with the property to him. Let this order be communicated to the Expert appointed by this Court through the Learned Registrar General forthwith...”

The learned Judge directed the matters to be listed before His Lordship after five weeks.

The three writ applications were taken up for final hearing by the learned Judge on March 8, 2024.

The learned Judge considered the report filed by the Chartered Engineer. The said report has two parts. Part-A is described as Plan-A, which pertains to the feasibility of repairing the Western portion of the property for making it fit for human habitation. The learned Judge agreed with the contention of Hena’s learned Advocate that, that part of the report was beyond the scope of the order of the learned Judge passed on August 29, 2023.

The second part of the report, described as Plan-B relates to the feasibility of demolishing the Western portion of the property in question without adversely affecting the structural stability of the Eastern portion of the property. The learned Judge was satisfied that Plan-B appears to be a workable procedure for demolition of the Western portion of the building. The learned Judge directed the Municipality to take a decision as regards Hena’s prayer for demolition of her portion of the property in the light of Plan-B as contained in the report of the Chartered Engineer. The learned Judge observed

that Plan-A was beyond the purview of the direction of the learned Judge pursuant to which the report was filed. His Lordship clarified that Plan-A is not to be considered and is to be 'eschewed'.

Being aggrieved, Gouri and others have come up by way of this appeal.

We have heard learned Counsel for the parties at some length. We do not see any infirmity as such in the order of the learned Single Judge. We only clarify that the report of the Chartered Engineer filed before the learned Single Judge will in no manner be binding on the Municipality while considering Hena's request for permission to demolish her portion of the building in question. The report of the Chartered Engineer will be only a piece of material that the Municipality will consider. The Municipality will be at liberty to attach such weight to the report as it may deem appropriate. Ultimately, it is the Municipality which will take an independent decision in the matter of permitting or not permitting Hena to demolish her portion of the building. However, the Municipality shall definitely consider the report of the Chartered Engineer. Needless to say that the decision will be taken by the Municipality observing the principles of natural justice, i.e., meaning thereby all concerned parties including the appellants herein and Hena and her associates will be granted full opportunity

of hearing and will be allowed to place such material before the Municipality as they may be advised.

Referring to the report of the Chartered Engineer, Mr. Dipta Banerjee, learned Advocate assisting Mr. Kallol Basu, learned senior Counsel, points out that even the Chartered Engineer at internal page 4 of the report mentions as follows:-

“Demolition of a building as a whole and demolition half of the building keeping other half absolutely remaining unaffected is really a matter of great concern, that too for a 150 year old building.

After thorough inspection of the whole building (both wings) in details and after going through all pros and cons and utilizing my experience of over 50 years in this industry, I am submitting a Comprehensive Report with Plan – A and Plan – B for favour of Hon’ble Court’s decision.

The report has been prepared on my visual observation only even during or after demolition any cracks/falling of ceiling tiles or any other damages are notice in Eastern wing, the same has to be properly repaired and mending good the damages by the owner of West wing at their cost without any delay.”

Mr. Banerjee’s clients will be at liberty to express such concern or apprehension before the Municipality at the hearing to be granted by the Municipality.

We have not gone into the merits of the disputes between the parties. The Municipality will finally decide whether or not the Western portion of the property in question can be demolished for the purpose of a new erection, without damaging in any manner, the Eastern portion of the property.

Let the entire exercise be completed by the Municipality within four weeks from date.

We are told that the appellant no.1, i.e. Gouri, passed away during pendency of this appeal. We are also told that all her legal heirs are on record. Therefore, no question of substitution arises. Let the name of Gouri Chakravarty be deleted from the cause title of the appeal papers. Leave is granted to learned Advocate-on-Record of the appellants to carry out such correction to the cause title of the appeal papers. Copy of the death certificate of the appellant no.1, filed in Court today be kept with the records.

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/673/2024 and the connected application being IA No: CAN/1/2024 are accordingly 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.)

(Prasenjit Biswas, J.)