

16.04.2024
Item No.3.
Court No.6.
AB

M.A.T. 720 of 2024
With
CAN 1 of 2024

Miss Surajita Hazra & Others
Vs
Soumitra Mukherjee & Others

Mr. Saumyen Dutta,
Mrs. Dolon Dasgupta,
Mr. Bhargab Mukherjee,
Ms. Sonali Palfor the Appellants.

Mr. Devajyoti Barman,
Ms. Sanjukta Basu Mallick,
Mr. Debanjan Khan.....for the Respondent No.1.

Mr. Sandipan Banerjee,
Mr. Ankit Surekha,
Ms. Shetparna Royfor the HMC.

Mr. Souvik Das,
Mr. Rudranil Dasfor the Respondent No.9.

Affidavit of service filed in Court today, be kept
with the records.

This litigation has a chequered history. It
appears that the respondent no.1 herein (hereinafter
referred to as “Soumitra”) obtained sanction from
Howrah Municipal Corporation (in short “HMC”) to
construct a ground + partially one storeyed building.
He ended up constructing a G+4 storeyed building. He
also managed to sell off the flats in such building to
unsuspecting purchasers.

It appears that HMC initiated a demolition case
in respect of the unauthorized construction which
culminated in a demolition order dated February 22,

2022. Soumitra challenged such order of demolition by filing WPA 5939 of 2022. That writ petition was dismissed for default. The application for restoration is pending.

It appears that the appellants purchased their respective flats in the building in question between May 19, 2022 and August 25, 2022. They say that they were completely misled by the builder, who played fraud on them. They had no idea that the building was mostly unauthorized.

The business partner of Soumitra filed WPA 4792 of 2023 for implementation of the demolition order issued by HMC. By an order dated April 17, 2023, a learned Single Judge of this Court directed HMC to implement the demolition order. Soumitra challenged such order by filing MAT 860 of 2023. He submitted before the Division Bench that prior to demolition of the alleged unauthorized construction, his representation for regularization should be disposed of by HMC.

By an order dated May 17, 2023, the Division Bench disposed of the appeal by directing HMC to decide Soumitra's application for regularization by passing a reasoned order.

By an order dated June 7, 2023, HMC rejected Soumitra's application for regularization.

On January 2, 2024, HMC allowed the application of the appellant nos.3 and 4 for mutation of their respective flats in their names.

Challenging HMC's order rejecting the regularization application, Soumitra approached the learned Single Judge in the present round of litigation by filing WPA 14295 of 2023. On March 20, 2024, the learned Single Judge passed an order granting the appellants and other purchasers of flats in the said building three months' time to vacate the premises so that the demolition order could be implemented. Soumitra was also directed to deposit Rs.1 Crore in Court by that order.

When the matter was again listed before the learned Judge on April 3, 2024, the learned Judge directed HMC to disconnect the water supply and also directed CESC Limited to disconnect the electric supply to the flats constructed unauthorizedly. The present appellants were added as party respondents to the writ petition. All the flat owners were directed to vacate the unauthorized portions within the time limit mentioned in the order dated March 20, 2024.

Being aggrieved by the said order dated April 3, 2024, the appellants are before us. They say that since the learned Single Judge granted three months time to them to vacate the premises in question, the learned Judge ought not to have directed immediate disconnection of water and electricity connection to

the said premises. The appellants have time till June 20, 2024, to vacate the premises. Disconnection of water supply or electricity could be directed only after that unless there are further developments in the meantime.

We agree with learned Advocate for the appellants. If the appellants have been granted time till June 20, 2024, to vacate the said premises, they should enjoy water supply and electricity till such date.

Accordingly, we set aside the portion of the order directing immediate disconnection of water supply and electricity again.

Another issue raised by learned Advocate for the appellants before us, and in our opinion very rightly, is that how could HMC grant mutation of the concerned flats in the names of the 3rd and 4th appellants when the flats have been illegally constructed? We also asked the same question to Mr. Banerjee, learned Advocate representing HMC. Mr. Banerjee refers to Section 177(2) of the HMC Act, 1980, and says that even assessment of a flat does not mean that the construction is considered to be legal and the same does not regularize an illegally constructed flat. This does not answer our query. We are of the opinion that prior to granting mutation to any applicant in respect of any construction, HMC must satisfy itself that the

construction in question is a legal one. This will avoid unnecessary confusions and complications.

Learned Advocate for the appellants prays for a direction on the builder i.e., Soumitra to rehabilitate the appellants, who would be rendered homeless after June 20, 2024. Since the writ petition is pending, we are of the view that the appellants should make such prayer before the learned Single Judge.

We are told that pursuant to the order impugned before us, CESC Limited has already disconnected electricity supply to the flats of the appellants situated in the building in question on 12.04.2024. CESC Limited is directed to immediately restore electricity supply to the flats of the appellants upon the appellants complying with necessary formalities. However, given that the weather is stifling and there is scorching heat in the air, CESC Limited is directed to do the needful as soon as possible and definitely within 48 hours from the time of communication of this order to the competent officer of CESC Limited.

Except the aforesaid modification, the order under appeal remains unaltered.

The appeal and the connected application stand disposed of.

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

Urgent photostat certified copy of this order, if applied for, be supplied expeditiously after compliance with all the necessary formalities.

(Arijit Banerjee, J.)

(Prasenjit Biswas, J.)