

17. 21.05.2024
Court No.6
(Tanmoy)

FMA/1010/2023

**RAM MOHAN PAL
VS
DEB KUMAR KHARA AND ORS.**

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

Mr. Satarup Banerjee, Adv.,
Ms. Sudipa Biswas, Adv.

...for the appellant.

Mr. Sandipan Banerjee Adv.,
Mr. Ankit Sureka, Adv.,
Mr. Sobhan Majumder, Adv.

...for Howrah Municipal
Corporation.

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

A judgment and order dated March 20, 2023, whereby the writ petition of the private respondent herein being WPA 392 of 2023 (*Sri Deb Kumar Khara v. Howrah Municipal Corporation & Ors.*), was disposed of by a learned Judge of this Court, is under challenge in this appeal at the instance of the private respondent in the writ petition.

The respondent/writ petitioner approached the learned Single Judge with a complaint that unauthorized construction is being made at premises no. 108/5/1,

G.T. Road (North), Salkia, Howrah – 711106. The said premises belong to the present appellant. The learned Judge noted that a representation has been made by the writ petitioner to Howrah Municipal Corporation (in short, 'HMC') objecting to the alleged illegal and unauthorized construction at the instance of the private respondent in the writ petition. The learned Judge disposed of the writ petition with the following observations and directions:-

“The writ petition is accordingly disposed of by directing the respondent no. 2, the Municipal Commissioner or his delegate to consider and dispose of the representation made by the petitioner strictly in accordance with law, after giving an opportunity of hearing to all the necessary parties including the petitioner within a period of three months from the date of communication of a copy of this order. The said respondent shall pass a reasoned order and communicate the same to all the necessary parties including the petitioner immediately thereafter.

In the event the aforesaid respondent is of the considered opinion that the construction has been made either in violation of the plan sanctioned or devoid the sanction plan, then necessary steps shall be taken to deal with such unauthorized construction, in accordance with law.

The aforesaid respondent shall restrict the consideration of the representation with regard to unauthorized construction only and not enter into or decide any private dispute of the parties regarding right, title and interest in respect of the aforesaid land.

It is made clear that this Court has not entered into the merits of the claim made by the petitioner and all points are left open to be decided by the aforesaid respondent at the time of consideration of the representation of the petitioner.”

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

Mr. Satarup Banerjee, learned Advocate representing the appellant, says that no new construction has been made at the appellant's premises, nor will any such construction be made. This can be recorded by the Court. Proceedings before HMC would mean that the appellant will be harassed.

Mr. Sandipan Banerjee, learned Advocate for HMC, says that pursuant to the learned Judge's order, a local inspection of the concerned premises was conducted by HMC upon notice to the appellant herein and the writ petitioner. Hearing has been fixed before the competent officer of HMC on May 24, 2024.

In view of the aforesaid, we see no reason to interfere with the order of the learned Single Judge. The appellant should attend the hearing fixed on May 24, 2024. Both the appellant and the writ petitioner will be entitled to make all submissions and will be at liberty to rely upon all documents including orders of this Court as they may be advised. After granting them due opportunity of hearing, the Competent Authority shall pass a reasoned order, in accordance with law within a period of three weeks from the date of the hearing.

We have not gone into the merits and the disputes between the parties. The concerned officer in HMC shall pass an independent order, in accordance with law.

The appeal being FMA/1010/2023 and the connected application being IA No: CAN/1/2024 are 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.)