

03.05.2024
Item No.17
Court No.6.
S. De

M.A.T. 863 of 2024
With
I.A. No. CAN/1/2024
Gorachand Sen.

Vs
The State of West Bengal & Ors.

Ms. Nivedita Chakraborty,
...for the appellant.
Mr. Rameshwar Sinha,
Ms. Debanjana Sen,
...for the respondent no.6.
Ms. Sonal Sinha,
Ms. S. Barai, ...for the H.M.C.

Mr. Himadri Sikhar Chakraborty,
Ms. Susmita Saha, ...for the State.

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

This appeal is directed against a judgment and order dated April 30, 2024, whereby a learned Judge of this Court disposed of a writ petition filed by the respondent no.6 herein, being WPA 24336 of 2022. The private respondent in the writ petition has come up by way of this appeal.

The writ petitioner had approached the learned Single Judge for implementation of a demolition order issued by the Howrah Municipal Corporation (in short "HMC") against the private respondent in the writ petition in respect of unauthorized construction raised by him.

It appears that earlier a notice dated March 14, 2022 was issued by the HMC to the appellant herein calling upon the appellant to secure and repair the damaged portions of his premises as per particulars mentioned in that notice. The appellant says that he only did such repairing work and no unauthorized construction has been made by him.

However, HMC thought otherwise. A demolition proceeding was initiated under Section 177(1) of the HMC Act 1980. An order for demolition was passed on July 13, 2022. Seeking implementation of that order, the present writ petition was filed.

The learned Judge noticed a communication made by the Assistant Engineer, Borough-III, HMC, to the Additional Commissioner of Police, Special Branch, dated April 20, 2024. That was a request made by the Assistant Engineer for deployment of police force on the day of execution of the demolition order. The learned Judge recorded the submission made on behalf of the private respondent in the writ petition (present appellant) that no new construction has been made but only repairing work of old construction in terms of permission granted by the HMC was done. The learned Judge disposed of the writ petition by directing the HMC to take necessary steps to demolish the unauthorized construction in accordance with law.

Being aggrieved, the respondent no.6 in the writ petition is before us by way of this appeal.

We enquired of learned advocate representing the appellant as to whether or not the appellant has challenged the demolition order dated July 13, 2022 before the appropriate forum. Learned advocate candidly says that such order has not been challenged.

In view of the aforesaid, no relief can be granted to the appellant. There is an order of demolition passed by the HMC after hearing the appellant. Therefore, there is no breach of the principles of natural justice. The appellant has not assailed such demolition order before the competent forum. We see no reason to interfere with the order under appeal.

MAT 863 of 2024 is disposed of along with the application being I.A. No. CAN 1 of 2024.

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

Urgent certified photostat copy of this order, if applied for, shall be given to the parties as expeditiously as possible on compliance with all the necessary formalities.

(Arijit Banerjee, J.)

(Prasenjit Biswas, J.)