

21.05.2024
Item No. 19.
Court No.6.
AB

M.A.T. 936 of 2024
With
CAN 1 of 2024

M/s. Bol Bhai Bol Construction
Vs
Howrah Municipal Corporation & Others

Mr. Sumitava Chakrabortyfor the Appellant.

Mr. Sandipan Banerjee,
Mr. Ankit Surekha,
Mr. Sobhan Majumdarfor the HMC.

Mr. Shuvro Prakash Lahiri,
Mr. Rajesh Naskar
....for the Respondent Nos.9-12.

Mr. Santanu Kr. Mitra,
Mr. Amartya Palfor the State.

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

A judgment and order dated May 3, 2024,
whereby two writ petitions were disposed of by a
learned Judge of this Court, is under challenge in this
appeal at the instance of one of the writ petitioners.
WPA 11341 of 2024 was filed by Tanima Das & Others
(collectively referred to as “Tanima”) alleging
unauthorized construction raised by her neighbour, in
deviation from the sanctioned plan. The neighbour
being M/s. Bol Bhai Bol Construction (in short “the
developer”) filed a writ petition being WPA 12685 of
2024 challenging a demolition order issued by Howrah
Municipal Corporation (in short “HMC”) on 9.4.2024.

It was submitted on behalf of the developer that no opportunity of hearing had been given to it prior to issuance of the order of self demolition. No inspection of the property in question was conducted to ascertain the nature of deviation. Sanction has been granted for construction of a G+4 storeyed building. Till now, a G+3 storeyed building has been constructed adhering to the sanctioned plan.

Tanima in her writ petition alleged that the construction is being made by the developer without leaving the mandatory open spaces. According to Tanima, before issuance of the self demolition order, opportunity of hearing was granted to the developer.

Learned Advocate appearing for HMC submitted before the learned Single Judge that an inspection is required to be conducted to ascertain as to whether or not there has been any deviation from the sanctioned plan.

The learned Judge disposed of the two writ petitions with the following directions:

“In view of the above, both the writ petitions are disposed of by directing the Corporation to conduct fresh spot inspection upon prior notice to both the parties to ascertain the exact nature and extent of unauthorized construction, if any. The report of spot inspection shall be circulated amongst the parties. An opportunity of hearing shall be given thereafter. If it ultimately transpires that there is any unauthorized construction, then necessary consequential steps shall be taken by the Corporation to deal with the same.

Till the matter is decided by the Corporation, no construction beyond the sanctioned plan shall be done at

83, Nilmoni Mullick Lane. The Officer in Charge of the Howrah Police Station is directed to keep strict vigil over the property to ensure that no construction beyond the sanctioned plan is carried on at the subject premises.

The construction Company is restrained from transferring/selling/alienating the subject property in favour of any third party until the matter is finally decided by the Corporation.

The Corporation is directed to take steps in the matter at the earliest, but positively within a period of twelve weeks from the date of communication of this order.

The impugned order of self demolition dated 9th April, 2024 is directed to be kept in abeyance till a fresh order is passed by the Corporation. “

Being aggrieved, the developer i.e. Bol Bhai Bol Construction has come up by way of this appeal.

Learned Advocate appearing for the appellant says that since there is no clear finding that there is unauthorized construction or at least the nature and extent of such unauthorized construction, only on the basis of a vague order of self demolition, the learned Judge ought not to have restrained the appellant from dealing with its property by injuncting it from transferring/selling/alienating the property in favour of any third party until the matter is finally decided by HMC.

Learned Advocate appearing for Tanima refers to the self demolition order and submits that the developer was very much heard by HMC. Hence, it cannot have any alleged grievance on that score.

Learned Advocate for HMC says that no local inspection of the property in question has been

conducted as yet. The same shall be done very soon and steps will be taken in terms of the direction of the learned Single Judge.

We do not find any infirmity in the direction of the learned Single Judge issued to HMC to take appropriate steps in the matter in accordance with law. However, we do not find any reason as of now to injunct the developer from dealing with its property. After all, a right to property, although no more a fundamental right, is still an important Constitutional right under Article 300A of the Constitution and has come to be recognized as a human right. Unless there are good reasons, such right should not be abridged.

We, therefore, modify the order under appeal only to the extent that the portion of the order restraining the appellant herein from transferring/selling/alienating the subject property in favour of any third party shall remain in abeyance. However, if upon local inspection, HMC issues any 'stop work notice' or comes to any kind of finding that there is unauthorized construction at the premises of the appellant herein, the order of injunction of the learned Single Judge shall become operative and shall continue till the proceeding before the HMC are taken to its logical conclusion.

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.)