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07-02-2024
(Ct. no.06)
debajyoti

**IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
APPELLATE SIDE**

**MAT 2243 of 2023
+
IA NO:CAN/1/2023**

**Happy Sunshine & Anr.
Vs.
The State of West Bengal & Ors.**

Mr. Tanmoy Mukherjee,
Mr. Souvik Das,
Mr. K. R. Ahmed,
Mr. Rudranil Das

... For the Appellants.

Mr. Sandipan Banerjee,
Mr. Ankit Sureka

... For Howrah Municipal
Corporation.

Ms. Nibedita Chakraborty

... For Private Respondents/
Writ Petitioners.

Read order dated November 24, 2023. Since by the present order, we intend to dispose of the writ petition, we reproduce the relevant portion of the order dated November 24, 2023 herein, for the sake of completeness:-

“ Happy Sunshine, the appellant no.1, is the business name of the appellant no.2, Sri Sunit Das. Happy Sunshine had earlier approached a learned Judge of this Court by filing WPA 9960 of 2022 challenging a demolition order issued by Howrah Municipal Corporation (in short ‘HMC’). An order dated June 16, 2022, was passed on that writ application directing the men and agents of HMC to make a fresh inspection upon prior notice to the writ petitioner, the complainant and all other concerned parties, within a stipulated time period. The inspection report was directed to be served upon the parties immediately thereafter.

Instead of following the direction of the learned Single Judge, HMC passed an order dated July 16, 2022, again for demolition of the construction in question. This order was challenged by Happy Sunshine by filing WPA 17632 of 2022. The learned Judge, by an order dated August 03, 2022, set aside the demolition order dated July 16, 2022, since it was passed contrary to the direction of a learned Judge, dated June 16, 2022, in an earlier writ petition. HMC was directed to take steps strictly in accordance with the order passed by the Court on June 16, 2022, within a period of three weeks from date. All other directions passed in the order dated June 16, 2022, were also directed to be complied with by HMC.

A further writ petition was filed by Happy Sunshine being WPA 27658 of 2022, wherein it was alleged that no inspection had been conducted by HMC, as required by the earlier order dated June 16, 2022. However, HMC was threatening to implement the demolition order. By an interim order dated December 16, 2022, the learned Judge restrained HMC and its men and agents from taking any steps for demolishing the structure in question till January 20, 2023. HMC was directed to file a report enclosing the inspection report on the adjourned date. The matter was directed to be listed on January 10, 2023.

On January 10, 2023, it was submitted before the learned Judge on behalf of HMC that a spot inspection had been conducted upon prior notice to Happy Sunshine. The learned Judge directed service of the inspection report on Happy Sunshine and directed HMC to take a decision after granting opportunity of hearing to Happy Sunshine. The learned Judge disposed of the writ petition by restraining HMC from taking further coercive action till a final decision was reached.

In the aforesaid factual background, the present writ petition has been filed. The writ petitioners claim to be owners of the land on which the impugned structure has been raised. The learned Judge, by the impugned order dated October 13, 2023,

directed demolition of the top two floors of the building in question.

The relevant portion of the impugned order reads as follows:-

“ I direct the Officer in Charge of Batra Police Station and the Municipal Commissioner of Howrah Municipal Corporation to demolish the unauthorized construction at the top two floors of premises no.110/2, Kali Kundu Lane, Ward No.24. The demolition has to be started by 15th October, 2023 and the preliminary report is to be filed before this court as to the progress of the demolition work on 18th October, 2023.

This order is mandatory. ”

The writ petition has been kept pending.

Being aggrieved, Sri Sunit Das, carrying on business under the name and style of Happy Sunshine, who was the private respondent in the writ petition, has come up by way of this appeal.

Learned advocate for the appellants submits that major portions of the fifth and sixth floors have been demolished by HMC. However, no copy of the inspection report has till date been served on the appellants, as was directed by a learned Judge in the earlier round of litigation. No hearing has also been given to the appellants, as per earlier directions of Court. Learned advocate, on instructions, says that the manner in which the demolition activity is going on, will almost certainly affect the stability of the authorized portion of the building and may also cause the entire building to collapse. ”

The demolition order dated July 16, 2022 issued by Howrah Municipal Corporation (in short ‘HMC’) stands set aside by an order dated August 03, 2022 passed by a learned Single Judge in WPA 17632 of 2022. By that order, HMC was directed to act in

accordance with the order dated June 16, 2022, passed earlier by another learned Single Judge.

In the subsequent writ petition being WPA 27658 of 2022 filed by Happy Sunshine, by the order dated January 10, 2023, the learned Single Judge recorded that a spot inspection had been conducted by HMC, but the inspection report had not been made available to Happy Sunshine. The learned Judge directed HMC to serve a copy of the inspection report on Happy Sunshine and to take a final decision after granting opportunity of hearing to Happy Sunshine. Till such decision is taken by HMC, it was restrained from taking any coercive action against the impugned structure.

In the aforesaid background, the order impugned was passed in the present round of litigation.

We are of the view that the impugned order cannot be sustained, since it runs contrary to the order of another learned Single Judge dated January 10, 2023 passed in WPA 27658 of 2022. In terms of that order, till HMC takes a final decision in the matter, observing the principles of natural justice, no coercive action could be taken in respect of the impugned construction.

Accordingly, we set aside the order under appeal. We direct HMC to make available copies of the inspection report to the learned advocates for the appellants and the respondents/writ petitioners within a week from date.

To avoid all controversies, we fix the hearing to be granted by the Assistant Engineer-in-Charge,

Building Department, Howrah Municipal Corporation, on February 22, 2024 at 02-00 P.M. at the chamber of the aforesaid officer of HMC. Both the appellants and the writ petitioners should be represented at such meeting. If either of them is absent, still the officer shall proceed with the hearing and pass a final order thereafter. The entire exercise shall be completed within a period of six weeks from date.

We have not gone into the merits of the disputes between the parties. The officer granting hearing to the parties shall take an informed decision in accordance with the applicable law and the rules and regulations.

The appeal and the connected application are, accordingly, disposed of.

Learned advocate for the respondents/writ petitioners says that in view of this order, nothing remains in the writ petition, which may be disposed of.

Accordingly, by consent of the parties, the writ petition is also disposed of by treating the same as on the day's list.

All parties shall act on the server copies of this order duly downloaded from the official *website* of this Court.

Urgent photostat certified copies of this order, if applied for, be supplied to the parties on compliance of all necessary formalities.

(M. V. Muralidaran, J.) (Arijit Banerjee, J.)