

19.01.2024
Item No.10
Court No.6.
S. De

M.A.T. 2336 of 2023
With
I.A. No. CAN/1/2024

M/s. S.J. Construction & Ors.
Vs
Gour Chandra Nandy & Ors.

Mr. Arijit Bardhan,
Mr. Debanik Banerjee,
Mr. Steven Biswas, ...for the appellants.

Mr. Sayan Sinha,
Mr. Nilanjan Bhattacharya,
Mr. Soham Kumar, ...for the respondent
nos. 1 to 3.

Mr Tanmoy Mukherjee,
Mr. Souvik Das,
Mr. K. Raihan Ahmed,
Mr. Rudranil Das,
Mr. Soumava Santra,
...for the respondent no.8.

Mr. Sandipan Banerjee,
Mr. Ankit Sureka, ...for the H.M.C.

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

A judgment and order dated November 24, 2023, passed in the writ petition of the respondent nos. 1 to 3 herein being WPA 24799 of 2023, is the subject matter of challenge in this appeal at the instance of the respondent nos. 6 to 8 in the writ petition. The respondents/writ petitioners approached the learned

Single Judge assailing an order dated September 21, 2023, passed by the Assistant Engineer-in-Charge, Building Department, Howrah Municipal Corporation (in short 'HMC'), directing the person responsible to demolish an unauthorized construction and deviated portions as mentioned in the Inspection Report, in default whereof, HMC would cause such demolition and recover the costs of demolition from the person responsible. The writ petitioners are the owners of the premises in question. The respondent nos. 6 to 8 in the writ petition are the present appellants and are the developers of the building in question.

The initial sanction was granted by HMC for constructing a G+2 storied building. Subsequently, sanction was granted for a G+4 storied building. The developers started construction. In course of the construction work, they made an application to the Commissioner, HMC for sanctioning a revised building plan for G+5 storied building. Such application was made on December 9, 2015. That application is still pending.

In the mean time, the respondent no.8 herein filed an objection before HMC regarding the impugned construction. With the grievance that such objection was not considered by HMC, he approached a learned Single Judge of this Court by filing WPA 1553 of 2019. That writ application was disposed of by a judgment

and order dated April 11, 2023. HMC was directed to consider and dispose of the representation/objection made by the writ petitioner therein after observing the principles of natural justice. It was further directed that if any unauthorized construction was found, then steps would be taken to deal with the same in accordance with law.

Pursuant to the aforesaid order, the Assistant Engineer-in-Charge, Building Department, HMC, held a hearing. At the hearing adjournment was sought for on behalf of the owners and the developers to enable them to produce relevant documents. Such request was turned down. A demolition order was passed as regards the unauthorized construction and deviated portions mentioned in the "Inspection Report".

Challenging the aforesaid self-demolition order, the respondent nos. 1 to 3 herein approached the learned Single Judge in the present round of litigation.

It was submitted before the learned Judge that firstly, refusal of the request for adjournment amounted to breach of the principles of natural justice; and secondly, the Inspection Report on the basis whereof the demolition order was passed, was not circulated amongst the parties. This also amounted to flouting of the rules of natural justice. The owners and developers were in the dark as to what was there in the Inspection Report. Several authorities

were relied upon by learned advocate for the writ petitioners.

The learned Judge concluded that since admittedly the Inspection Report had not been circulated amongst the parties, a fresh hearing should be granted to the parties. The learned Judge disposed of the writ petition with the following observations and directions.

“As an issue has been raised with regard to the violation of principles of natural justice and as admittedly, the inspection report has not been circulated, accordingly, to put an end to the dispute once and for all, the Corporation is directed to grant a further opportunity of hearing to all the parties for production of documents in support of the construction made.

A joint inspection shall be conducted upon prior notice to all the parties and the spot inspection report be circulated amongst the parties. After circulation of report, the hearing shall be conducted and final order shall be passed in the matter.

Spot inspection shall be conducted by 8th December, 2023 and therefore subsequent steps shall be taken by the Corporation at the earliest. Final order shall be passed

positively within a period of 60 days from the date of circulation of the spot inspection report.

The notice of spot inspection and the notice of hearing shall be served upon the person(s) responsible for making construction/the owners and the occupiers of the subject structure and the said notice shall be pasted at several conspicuous places in and around the subject property so that none can come forward in future claiming ignorance of the notice of spot inspection and hearing.

As it appears that the Corporation has already detected unauthorized construction of the top most floor and deviation in the G+4 floors, accordingly, the person(s) responsible for making construction is restrained from making any further construction at the subject premises till the issue is finally decided by the Corporation.

The person(s) responsible and the owners of the subject property are restrained from transferring/alienating or creating any third party right in respect of any portion of the subject structure till the issue is finally decided by the Corporation.

The impugned order dated 21st September, 2023 is, accordingly, set aside and quashed.”

Being aggrieved, the respondent nos. 6 to 8 in the writ petition have come up by way of this appeal.

Mr. Bardhan, learned advocate appearing for the appellants says that the appellants are aggrieved by only one observation in the order. The learned Judge has directed the Assistant Engineer to grant a further opportunity of hearing to all the parties **“for production of documents in support of the construction made.”** However, hearing cannot be only for production of documents. The parties must be permitted to make oral submission as well.

We are sure that the learned Single Judge did not contemplate only filing of documents at the hearing to be granted. However, we clarify that at the hearing that will be granted by the Assistant Engineer-in-Charge, Building Department, the parties will be at liberty to make such verbal submission as they may be advised. We are told that inspection in terms of the learned Single Judge’s order was held on January 4, 2024. Let copies of the Inspection Report be circulated amongst the parties expeditiously within a week from date (January 26, 2024) with liberty to file exception thereto within a week thereafter (February 2, 2024). Let the hearing be held and final order be passed by

the concerned officer within three weeks thereafter (February 23, 2024).

The other issue raised by Mr. Bardhan is that the application of the appellants for revised plan for G+5 storied building has not yet been disposed of. Since such application was submitted more than eight years ago, let the same be re-submitted before the Commissioner, HMC within a week from date (January 26, 2024) with a copy to Mr. Banerjee, learned advocate representing HMC in the present appeal. Let the Commissioner consider such application and dispose of the same by a reasoned order after observing the principles of natural justice.

Since the Commissioner, HMC will be disposing of the application for revised building plan, it may be convenient if the Commissioner also passes the final order as regards alleged unauthorized construction and construction in alleged deviation from the sanctioned plan.

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

MAT 2336 of 2023 is disposed of along with the application being I.A. No. CAN 1 of 2024.

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.)

(Apurba Sinha Ray, J.)