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26-02-2024
(Ct. no.06)
debajyoti

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

**MAT 2467 of 2023
+
IA NO:CAN/1/2023**

**Dr. Rajashree Ray Bandyopadhyay
Vs.
The Bidhannagar Municipal Corporation & Ors.**

W I T H

**MAT 2460 of 2023
+
IA NO:CAN/1/2023**

**Rajiv Ranjan Kumar
Vs.
Dr. Rajashree Ray Bandyopadhyay & Ors.**

Mr. Surajit Nath Mitra, Sr. Adv.,
Mr. Sayantan Bose,
Mr. Sarbojit Mukherjee,
Mr. Sattik Rout

... For the Appellant in
MAT/2467/23 & Respondent
No.1 in MAT/2460/23.

Mr. Tanmoy Mukherjee,
Mr. Amal Kumar Saha,
Mr. Iresh Paul

... For the Respondent No.4 in
MAT/2467/23 & the Appellant
in MAT/2460/23.

Mr. Sirsanna Bandopadhyay,
Mr. Arka Kumar Nag,
Mr. Tirthankar Dey

... For Bidhannagar Municipal
Coorporation.

Mr. Saurabh Guhathakurata,
Ms. Nilanjana Sarkar,
Mr. Abhratanu Sarkar

... For the Respondent No.3 in
MAT/2467/23 & Respondent
No.4 in MAT/2460/23.

Affidavits-of-Service filed in Court today be taken
on record.

These two appeals are directed against a judgment and order dated November 23, 2023, passed by a learned Judge of this Court in WPA 20749 of 2023, which is a writ petition filed by the appellant in MAT 2467 of 2023 (hereinafter referred to as “Rajashree”). The writ petition is still pending before the learned Single Judge.

MAT 2460 of 2023 has been filed against the same judgment and order by Rajiv Ranjan Kumar (hereinafter referred to as “Rajiv”).

The real dispute appears to be between Rajashree and her brother, Dr. Partha Sarathi Ray (hereinafter referred to as “Partha”). Partha and Rajashree appear to have inherited the property in question, which was leased out to their parents as joint lessees. After the demise of the parents, the not so unusual dispute started between the brother and sister. Partha lives in Liverpool, UK. It appears that Rajashree has entered into a development agreement with Rajiv, the appellant in MAT 2460 of 2023, in respect of the property in question.

There were earlier rounds of litigation between the parties to the records whereof we need not advert for the present purpose. Suffice it to say that pursuant to orders of this Court, an order dated July 10, 2023, was passed by the Commissioner, Bidhannagar Municipal Corporation (in short ‘BMC’), the operative portion whereof reads as follows:-

“ Under the facts and circumstances, undersigned directs the occupier(s) to vacate the subject premises within 4 (four) weeks from the receipt of this order, after which they will demolish the unauthorized structure

erected without any sanctioned building plan and in contravention to provision contained under Sections 262B, 272, 273, 273A (1) and 266 within a further period of 4 (four) weeks from the receipt of this order; failing which this Corporation will take appropriate steps without any further reference as per provisions of relevant rules and acts to demolish the unauthorized structure and recover the expenses of such demolition from the occupier as per provisions of West Bengal Municipal Corporation Act 2006. ”

Challenging the aforesaid order of the Commissioner, BMC, Rajashree approached the learned Single Judge in the present round of litigation. The learned Judge passed the impugned order, the relevant portion whereof reads as follows:-

“ The observation also mentions that the entire ground floor is being used commercially without necessary permission.

Admittedly, the subject structure is meant for residential use. No permission has been granted by any authority for using the same commercially.

Learned senior counsel representing the petitioner submits that steps shall be taken by the petitioner to reconstruct the partition walls and to act in accordance with the observations made in the impugned order at the earliest and latest within a period of eight weeks.

After construction of the partition walls notice shall be given to the Corporation so that inspection may be conducted to verify whether or not the unauthorised construction has been demolished and whether or not the internal partition walls and the other necessary works have been carried out in accordance with the order of the Commissioner.

The impugned order passed by the Commissioner, Bidhannagar Municipal Corporation on 10th July, 2023 is kept in abeyance till 31st January, 2024.

In the event, the petitioner fails to act in accordance with the observations made in the impugned order within the aforesaid time limit as specified by the Court, then it will be open for the Corporation to take necessary steps in accordance with law after inspection of the property.

The petitioner, through the occupants, is restrained from using the subject property commercially without obtaining any permission from the competent authority. ”

Being aggrieved, Rajashree is before us by filing MAT 2467 of 2023. Rajiv has filed the other appeal being MAT 2460 of 2023.

We have heard Mr. Surojit Nath Mitra, learned Senior Advocate, appearing for Rajashree, and Mr. Tanmoy Mukherjee, learned advocate, appearing for Rajiv. Both Rajashree and Rajiv are essentially aggrieved by the last paragraph of the order extracted above, i.e., by the order restraining Rajashree from using the subject property commercially without obtaining permission from the Competent Authority.

Mr. Mitra, learned Senior Advocate, submitted that license was duly granted by BMC in favour of the predecessor-in-interest of Rajashree to carry on commercial activity from the premises in question. Validity of such license expired by efflux of time sometime in the year 2020. At that time, Covid-19 had set in. Almost two years were consumed by the pandemic and nothing could be done for renewal of the license. After normal life resumed, steps have been taken by Rajashree for renewal of the license

permitting commercial activity at the said premises. The learned Single Judge ought not to have restrained carrying on of commercial activity at the concerned premises. The same was beyond the scope of the writ petition that was filed by Rajashree.

Similar submission has been made by Mr. Mukherjee, learned advocate, appearing for Rajiv. He says that Rajiv is in actual occupation of the concerned premises and runs a grocery shop therefrom. He has been doing that for quite a long time. He had applied for requisite clearance from the Land Manager, Bidhannagar. Such application was rejected by an order dated September 01, 2023. Learned counsel also says that a statutory appeal has been filed against the order of the Land Manager, Bidhannagar refusing requisite permission. A writ petition has also been filed challenging such rejection order. Such writ petition being WPA 28762 of 2023 is pending before a learned Single Judge of this Court. The learned Judge ought not to have *suo motu* passed a restraint order as regards commercial activity. That was not the subject matter of the writ petition on which such order was passed.

We have heard Mr. Guhathakurata, learned advocate for Partha and Mr. Nag, learned advocate for Bidhannagar Municipal Corporation.

We do not find any infirmity in the order of the learned Single Judge directing that no commercial activity will be carried on at the concerned premises without obtaining requisite permission therefor from the Competent Authority. The question of change of user may or may not have been a subject matter of the writ petition on which the aforesaid direction was issued. Admittedly, the premises in question is

residential in nature and the sanction that was granted by the Competent Authority for construction of the building was for residential purpose. The law requires and in this connection, reference may be had to Section 267 of the West Bengal Municipal Corporation Act, 2006, that user of any building will not be changed without obtaining permission in writing from the Commissioner of the Corporation. In the present case, admittedly as on date, there is no permission from the Commissioner, BMC, allowing carrying on of commercial activity at the concerned premises. Therefore, once this fact was brought to the notice of the learned Single Judge, it was wholly appropriate for Her Ladyship to pass the restraint order by which Rajashree and Rajiv are aggrieved. We do not find their grievance to be legitimate. Nobody can carry on commercial activity from a residential building or any portion thereof without obtaining due permission from the Competent Authority.

Steps may have been taken by Rajashree and Rajiv for challenging the order of the Land Manager, Bidhannagar, rejecting the application for conversion of user of the premises in question. They should carry such proceedings to their logical conclusion. We make it clear that without first obtaining permission from the Competent Authority, no commercial activity shall be carried on at the said premises. We unhesitatingly affirm the order of the learned Single Judge.

The appeals and the connected applications are, accordingly, disposed of.

Affidavits not having been called for, the allegations in the stay petitions shall be deemed not to have been admitted by the respondents.

This order will not have bearing on any proceeding that may have been initiated by either Rajashree or Rajiv for obtaining due permission from the Competent Authority for change of user of the premises in question from residential to commercial.

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.

(Gaurang Kanth, J.)

(Arijit Banerjee, J.)