

28.02.2024
Item No.11
Court No.6.
S. De

M.A.T. 2476 of 2023
With
I.A. No. CAN/1/2023
I.A. No. CAN/2/2023

Manashi Banerjee & Ors.
Vs
United Enterprise & Ors.

Mr. Raghunath Chakraborty,
...for the appellants.

Mr. Sirsanya Bandopadhyay,
Mr. Tirthankar Dey,
Mr. Arka Kr. Nag,
...for the B.M.C.

Upon the undertaking of learned advocate-on-record for the applicants to file affidavit-of-service in course of the day, this matter is taken up for hearing.

In re : I.A. No. CAN /1/2023

The applicants pray for leave to prefer appeal against a judgment and order dated December 11, 2023, passed by a learned Judge of this Court in WPA 26385 of 2023 being a writ petition filed by the respondent nos. 1 to 5 herein. In effect, the learned Judge has directed Bidhannagar Municipal Corporation (in short 'BMC') to ascertain the genuineness of the plan relied upon by the writ petitioners for construction of a G+4 storeyed building. It was further directed that if it appears that the plan

and the supporting documents are not genuine and if any construction has been made over and above the plan relied upon by the petitioners, it will be open for the BMC to take steps for demolition of the unauthorized construction.

Learned advocate for the applicants says that the applicants are owners of flats in the concerned building. They were not made parties to the writ petition. They are adversely affected by the order of the learned Single Judge. Hence they should be permitted to prefer appeal against that order.

Having heard learned counsel for the applicants, we are of the view that the applicants may have something to say regarding the order sought to be impugned before us.

Accordingly, this application is allowed.

I.A. No. CAN/1/2023 is disposed of.

In re : MAT 2476 of 2023 & I.A. No. CAN / 2/2023

The writ petitioners approached the learned Single Judge assailing an order dated May 3, 2023, passed by the Commissioner of BMC. The operative portion of that order reads as follows :

“Under the facts and circumstances and as per detailed inspection report submitted, the undersigned directs the developer namely Sri Amit Das, Sri

Kamal Mondal, Sri Dipankar Math and Smt. Chandrani Nandi to demolish the unauthorized extra 2 (two) floor erected beyond the sanctioned part of G+3 structure without valid sanctioned building plan within a 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 constructions and recover the expenses of such demolition from the developer as per provisions of West Bengal Municipal Corporation Act 2006.”

The learned Single Judge disposed of the writ petition with the following observations and directions :

“The learned advocate representing the Corporation submits, upon instruction that, apart from sanction of the G+3 storied building, there is no other record with the Corporation with regard to the sanction of the G+4 storied plan as claimed by the petitioner. It has been pointed out that completion certificate could not have been issued on 31.03.2014 in respect of a G+4

storied building with a sanction given on 31.03.2014.

the petitioners insist that there is no other construction beyond the sanctioned plan of the G+4 storied building.

The Corporation is, accordingly, directed to ascertain the genuineness of the plan relied upon by the petitioners for construction of G+4 storied building. If it appears that the plan and the supporting documents are not genuine and if any construction has been made over and above the plan relied upon by the petitioners, then it will be open for the Corporation to take steps for demolition of the unauthorised construction.

The Corporation is directed to verify the genuineness of the plan at the earliest but positively within a period of four weeks from the date of communication of this order.

The petitioners will be obliged to produce the original building sanctioned plan of G+4 storied building, the revised plan and the completion certificate before the Corporation at the time of hearing.

The proceeding and the consequent steps shall be concluded at the earliest but positively within a period of three months from the date of hearing the matter by the Corporation.”

The appellants say that they were given to understand that the building has been duly sanctioned by the Rajarhat Gopalpur Municipality, which subsequently merged with BMC in 2015. They obtained bank loans and purchased flats in the building. They have no knowledge of any illegality in the impugned construction. They are parties aggrieved by the demolition order passed by the Commissioner of BMC which was passed without granting them an opportunity of hearing. If the demolition order is implemented, they will suffer grave prejudice. They should be granted an opportunity of hearing by the BMC.

We have also heard Mr. Nag, learned advocate for the BMC. He has made essentially the same submission as was made on behalf of the BMC before the learned Single Judge and recorded by Her Ladyship in the impugned order. Primarily, Mr. Nag points out that according to the petitioners, the building plan was sanctioned on March 31, 2024 and the completion certificate was also issued on the same

date. This is impossible. The documents relied upon by the writ petitioners are manufactured.

From the affidavit-of- service it appears that the writ petitioners may not have been served with the appeal papers. However, in view of the nature of the order we propose to pass, which will not adversely affect any interest of the writ petitioners, we do not deem it necessary to defer disposal of this appeal.

Having considered the submissions made on behalf of the parties, we are of the opinion that it would be proper for us to permit the appellants herein to approach BMC and BMC should grant the appellants an opportunity of hearing. It cannot be said, in our opinion, that the appellants are not “parties aggrieved” with the demolition order. They own and occupy flats in the building in question. Demolition of the impugned portion of the building will surely affect them adversely.

Hence, we direct the Commissioner, BMC to serve notice of the final hearing on the appellants and all other owners of flats in the building in question as also on the writ petitioners and permit them to participate in the proceedings to be held by the Commissioner. The hearing should be held by the Commissioner within a month from today. The proceedings should be finally disposed of within two months from the date of hearing. We have not gone

into the merits of the case. The order of the learned Single Judge stands modified to the aforesaid extent.

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

MAT 2476 of 2023 is disposed of along with the application being I.A. No. CAN 2 of 2023.

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.)

(Gaurang Kanth J.)