

03.01.2024
Item No.04
Court No.6.
S. De

M.A.T. 2500 of 2023
With
I.A. No. CAN/1/2023
Bhanumati Devi Rajbhar & Ors.
Vs
Mira Devi Pathak & Ors.

Mr. Juin Dutta Chakraborty,
...for the appellants.

Mr. Rishav Singh,
Mr. Sagar Mishra, ...for the respondent no.1.

Mr. Debasish Kundu,
...for the respondent no. 7.

Mr. Sandipan Banerjee,
Mr. Ankit Surekha,
Mr. Sobhan Majumder, ...for the H.M.C.

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

This appeal is directed against an order dated December 7, 2023, passed by a learned Judge of this Court in the writ petition of the respondent no.1 herein, being WPA 3153 of 2023. The order impugned is interim in nature in the sense that the writ petition is still pending before the learned Single Judge.

The writ petitioner approached the learned Single Judge with the grievance that the private respondents in the writ petition, five of whom are the present appellants, had made unauthorized construction at premises no. 72/1, Sri Aurobindo

Road, Salkia, P.S.-Golabari, Ward No.11 under Howrah Municipal Corporation (in short "H.M.C."). The learned Judge noted that the complaint of the writ petitioner was considered by H.M.C. An opportunity of hearing was given to all the necessary parties and a self-demolition order was passed some time in July, 2021.

It was submitted by the writ petitioner before the learned Judge that demolition has still not been effected and the persons responsible are merrily continuing with the construction work. The learned Judge passed the following directions.

"As it appears that the unauthoized construction was detected way back and self-demolition notice is awaiting implementation, accordingly, the Howrah Municipal Corporation is directed to take immediate steps to execute the demolition order in accordance with law.

The Howrah Police Commissionerate is directed to render adequate police protection to the men and agents of the Howrah Municipal Corporation at the time of implementing the order of demolition. The police shall also take steps for vacating the structure, if it appears that the same is occupied.

The persons responsible are restrained from transferring, alienating or creating third party rights in the subject structure as the same is an absolute unauthorized one.

The demolition shall take place at the earliest."

The learned Judge has directed the matter to be listed again on January 17, 2024.

Being aggrieved, the respondent nos. 6 to 10 in the writ petition have come up by way of this appeal.

The primary grievance of the appellants is that the writ petition was running in the Monthly Combined List of the learned Judge. The writ petitioner obtained upgradation without serving notice on the appellants herein. As such the order impugned was passed without hearing the appellants.

Learned advocate for the respondent/writ petitioner, in his usual fairness, candidly says that in fact no notice of upgradation was served on the present appellants.

We are of the view that the appellants herein should have been given an opportunity of hearing by the learned Judge prior to passing any order which may adversely affect the appellants herein. This follows from the basic tenets of natural justice.

Accordingly, only on the aforesaid ground and without touching the merits of the case at all, we set aside the order under appeal and remand the matter back to the learned Judge having determination to hear the writ petition to pass appropriate orders after granting an opportunity of hearing to the present appellants and all the respondents in the writ petition. Till the matter is re-considered by the learned Single

Judge, H.M.C. shall not take any coercive step against the impugned construction. The respondents in the writ petition are also restrained from transferring, alienating or creating third party rights in the subject structure. The respondents in the writ petition are also restrained from making any further construction at the premises in question till the matter is reconsidered by the learned Single Judge.

Let the matter be listed before the learned Single Judge on January 17, 2024, as was the desire of Her Ladyship.

It is put on record that copies of the supplementary affidavit used by the writ petitioner before the learned Single Judge has been made over by learned advocate for the writ petitioner to learned advocates for the respondents in Court today.

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

MAT 2500 of 2023 is disposed of along with the application being I.A. No. CAN 1 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.)

(Apurba Sinha Ray, J.)