

3.
29-07-2025
debajyoti
(Ct. no.37)

CRC/12/2024
+
IA NO:CAN/1/2025
in
MAT/1034/2022

Sk. Habibur Rahaman
Vs.
Kalpana Hatui & Anr.

Mr. Sanjib Seth
... For the Petitioner in CRC/12/2024.

Mr. Jaharlal De, learned AGP,
Mr. Shamim ul Bari
... For the State.

Mr. Sarbananda Sanyal,
Ms. Poulami Chakraborty
... For Respondent No.7.

Mr. Soumya Majumdar, Sr. Adv.,
Mr. Joy Chakraborty,
Ms. Ipsita Ghosh
... For the applicant in CAN/1/2025.

Dictated by Arijit Banerjee, J.

1. MAT 1034 of 2022 was disposed of along with the connected application by a judgment and order dated August 02, 2022. The present applicant was a private respondent in that appeal. That appeal arose out of a writ petition whereby the writ petitioner sought for demolition of alleged unauthorized construction raised by the said private respondent. Not having obtained favourable order, the writ petitioner approached the appeal court which passed the order dated August 02, 2022.

2. The order dated August 02, 2022 records that “*It appears from the affidavit of service filed in court today that the private respondents have been served. However, they are not represented*”.

3. The operative portion of that order reads as follows:

“ We are of the view that the Pradhan, Maju Gram Panchayat would be the appropriate authority to decide the grievance of the present writ petitioner also. Accordingly, we grant liberty to the writ petitioner to make a representation to the Pradhan of the Maju Gram Panchayat, who is the respondent no.7 before us, within three weeks from date. If such representation is made within the time indicated, the respondent no.7 shall dispose of the same in accordance with law by a reasoned order within a period of two months from the date of receipt of such representation, after giving an opportunity of hearing to the writ petitioner and the private respondents herein as also to any other concerned party. The decision so taken shall be communicated to the parties within a week from the date of the decision. Needless to say, if the respondent no.7 finds merit in the complaint made by the present appellant, appropriate remedial steps will be taken by him/her. We have not gone into the merits of the respective cases of the parties. The respondent no.7 shall take an informed decision in accordance with law. ”

4. Alleging willful violation of that order, the writ petitioner filed a contempt application being CPAN 94 of 2023 which was renumbered as CRC 12 of 2024 after issuance of Rule. The Pradhan of the concerned Gram Panchayat was respondent no.2 in the contempt application.

5. The contempt application was disposed of by an order dated June 17, 2025, the operative portion whereof reads as follows:

“ 3. We find from the affidavit filed by the alleged contemnor no.2 in response to the Rule that the alleged contemnor no.2 has passed an order dated March 24, 2025, recording that unauthorized construction/illegal construction has been raised at the instance of the person responsible being Ali Hafez. By the said order dated March 24, 2025, the alleged contemnor no.2 as Pradhan of the Maju Gram

Panchayat, called upon Ali Hafez to demolish the unauthorized construction within fifteen days. It further appears that a copy of the said order which is really a self-demolition order has been forwarded to Ali Hafez and the present petitioner.

4. Learned advocate for the petitioner says that although fifteen days period has elapsed long ago, neither has Ali Hafez demolished the unauthorized construction nor the Panchayat has taken any step.

5. We direct the Prodhan of Maju Gram Panchayat to demolish the unauthorized construction raised by Ali Hafez, following due procedure, at the cost of Ali Hafez. We clarify that the Panchayat will be at liberty to recover the cost of demolition of the unauthorized construction from Ali Hafez. Let the exercise be carried out within a month from the date of communication of this order by the petitioner to the Prodhan of Maju Gram Panchayat."

6. The present application has been taken out for recall of the order dated June 17, 2025. The applicant, who was the private respondent no.9 in the aforesaid writ proceedings, says that certain very material facts were not placed before this Court when the order dated June 17, 2025 was passed. More particularly, an order of the concerned Gram Panchayat revoking sanction of a building plan that had been granted in favour of the present applicant, has been challenged by the present applicant in a writ petition before a learned Judge of this Court. The writ petition is still pending. If, in the meantime, the alleged unauthorized construction in question is demolished, the writ petition will become infructuous and the applicant will suffer serious prejudice.

7. We are of the view that the present application is not maintainable. The order of which recall is sought, was passed on a contempt application to which the applicant was not a party. In the contempt application,

we were only concerned with whether or not the parent order dated August 02, 2022, was violated or not. We found that the alleged contemnor no.2 had passed a reasoned order in terms of the parent order and had also issued self-demolition order against the person responsible, i.e., the applicant herein. All we did was to direct the alleged contemnor no.2, being the Pradhan of the concerned Gram Panchayat, to fully implement the parent order dated August 02, 2022, by completing demolition of the unauthorized structures. We are not inclined to entertain the present application.

8. However, we clarify that if the applicable law requires the concerned Sub-Divisional Officer to take a final decision in the matter of demolition of the concerned structure, such decision shall be taken before demolition is implemented. Such decision shall be taken by the concerned Sub-Divisional Officer within a month from the date of communication of this order by the writ petitioner and/or the applicant herein to the Sub-Divisional Officer.

9. CAN 1 of 2025 is, thus, disposed of.

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

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

(Rai Chattopadhyay, J.) (Arijit Banerjee, J.)