

06.08.2025.
Item No. 3.
Court No. 13
pk

M.A.T. No. 413 of 2024
CAN 2 of 2024
CAN 3 of 2025
Brig. Arindam Mazumdar, VSM (Retd.) & Anr.
Versus
The Chairman, Board of Councillors, Bidhannagar
Municipal Corporation & Ors.

Mr. Supriyo Bose, Id. Sr. Advocate,
Mr. Debajyoti Deb,
Ms. Somdyuti Parekh
Mr. Harshawardhan Kr. Jha
...For the appellants.

Mr. Sirsanya Bandopadhyay,
Mr. Tirthankar Dey,
Mr. Arka Kumar Nag
...For the BMC.

Mr. Suddhasatava Banerjee,
Mr. Ratul Das,
Mr. Joyjeev Medhi
... For the respondent no. 4.

1. The instant appeal is directed against an order dated 14.12.2023 passed by the Single Bench of this Court in WPA 25945 of 2023.
2. By the said order, the Hon'ble Single Bench directed the Bidhannagar Municipal Corporation (BMC) to demolish unauthorized portions of the appellants' premises. It was also directed enquire into unauthorized construction in any other parts of the building complex which houses several residential units including that of the private respondent represented by Mr. Suddhasatava Banerjee.
3. The order was carried in appeal before a Division Bench of this Court in MAT 293 of 2024. The said appeal was disposed of by the judgement and

order dated 26.02.2024 whereby and under the Co-ordinate Bench was of the view that unauthorized construction in other residential units in the building complex cannot confer any right on the appellants before us to effect unauthorized construction and continue with the same.

4. The BMC was directed to address unauthorized construction in the appellants' flat and take steps for demolition for the same. The appellants herein carried the judgement dated 26.02.2024 passed in MAT 293 of 2024 before the Hon'ble Supreme Court in SLP 21163 of 2024.

5. Before the Supreme Court an argument was raised based on a Notification of the State Government dated 04.12.2023 permitting minor deviations to be regularized. Notices were issued and the private respondent appeared on the returnable date. The Hon'ble Supreme Court, however, on the returnable date found no reason to interfere with the order of the Co-ordinate Bench dated 26.02.2024 and dismissed the SLP.

6. Mr. Bose, learned senior advocate appearing for the appellants/writ petitioners argues that since the notification and some portions of the building rules have not been appropriately dealt with either by the Single Bench in the impugned order or the Division Bench of the Hon'ble Supreme Court. His client is entitled to maintain the instant appeal on such

ground. He further submits that the instant appeal is in the nature of cross appeal against the impugned judgement.

7. Mr. Bose has placed reliance on the decision of the Supreme Court in the case of **the Workmen of Cochin Port Trust Vs. the Board of Trustees of the Cochin Port Trust and another** reported in **AIR 1978 SC 1283** particularly paragraphs 8, 9 and 11 thereof and the case of **State of Uttar Pradesh Vs. Nawab Hussain** reported in **AIR 1977 SC 1680** particularly paragraphs 6 and 7 thereof. He argues by reason thereof that since these issues raised in the instant appeal were not considered by the Co-ordinate Bench of the Hon'ble Supreme Court, the appeal against the order of the Single Bench can be maintained before this Court.

8. There are two issues that stand out. Firstly Explanation 4 to Section 11 of the CPC which prescribes that any matter which might and/or to have been made ground of defence or attack in the former suit shall be deemed to have been matter directly and substantially in issue in such suit. One need not travel far beyond the explanation even having regard to the observations of the Hon'ble Supreme Court in the cases of Nawab Hussain (supra) and the Workmen of Cochin Port Trust (supra).

9. True, indeed it is, that the scope of res judicata and constructive res judicata are not restricted to

Section 11 and in a given case a Court can still entertain an appeal, notwithstanding a final decision by Co-ordinate Bench against the same order. One must also bear in mind that the strict principles of the CPC are not applicable to proceeding under Article 226 of the Constitution of India.

10. Notwithstanding the above, several sections and orders of the CPC have been applied to proceedings under Article 226 by the Hon'ble Supreme Court in several decisions which are not adverted to presently.

11. In the opinion of this Court what is relevant is that the notification dated 04.12.2023 and the provisions of the building rules as sought to be raised by Mr. Bose before us had been raised before the Hon'ble Supreme Court when the SLP came for admission for the first time. The dismissal of the SLP on returnable date leaves little scope for this Court to reopen the decision of Co-ordinate Bench dated 26.02.2024 (supra). The order of the Single Bench has merged with that of the Division Bench dated 26.02.2024 even otherwise.

12. Leaving other remedies as may be available in law to the appellants open, this Court is of the view that the instant appeal cannot be entertained.

13. The order of Co-ordinate Bench, however, does not stand in the way of the BMC from inspecting other unauthorized construction within the complex and otherwise and taking steps in accordance with law.

14. Accordingly, MAT 413 of 2024 is, this, dismissed. Consequently, connected pending applications are also dismissed.

15. There will be no order as to costs.

16. All parties are directed to act on a server copy of this order duly downloaded from the official website of this Court.

(Rajasekhar Mantha, J.)

(Ajay Kumar Gupta, J.)