

20.12.2023
Item No.14.
Court No.6.
AB

M.A.T. 2047 of 2023
With
I A CAN 1 of 2023
I A CAN 2 of 2023

Basudeb Chatterjee & Anr.
Vs
Howrah Municipal Corporation & Others

Mr. Shibaji Kumar Das,
Mr. Debarshi Brahma,
Mr. Dipendu Sarkar ...for the Appellants.

Mr. Sandipan Banerjee,
Mr. Ankit Sureka,
Mr. Sobhon Majumdar ...for the H.M.C.

Mr. Bhudeb Bhattacharya, Sr. Adv,
Mr. Subham Ghosh....for the Respondent No.7 /
Writ Petitioner.

In re : IA CAN 2 of 2023

The applicants were not parties to the writ petition on which the order sought to be impugned was passed by a learned Single Judge of this Court. The order is one of demolition of an alleged unauthorized construction.

The applicants say that they are the owners of the property in question. Hence, they are vitally affected by the impugned order. The demolition order was passed without granting them an opportunity of hearing.

Having heard learned Counsel for the applicants, we are of the view that the applicants may have something to say regarding the impugned order.

Accordingly, leave is granted to the applicants to prefer appeal against the order of the learned Single Judge sought to be impugned.

CAN 2 of 2023 is disposed of.

In re : MAT 2047 of 2023, IA CAN 1 of 2023

A judgment and order dated September 20, 2023, passed by a learned Judge of this Court in the writ petition of the respondent no.7 herein, being WPA No.17959 of 2023, is under challenge in this appeal.

The respondent/writ petitioner approached the learned Single Judge seeking implementation of an order dated December 30, 2022, passed by the Assistant Engineer, Borough-V, Howrah Municipal Corporation (in short "HMC"), for demolition of an alleged unauthorized construction at holding no.94/1, Abinash Banerjee Lane, P. S. Shibpur, Ward No.33, within the jurisdiction of HMC.

The learned Judge held that since HMC has come to a finding that there is unauthorized construction at the concerned premises, HMC is duty bound to implement the order of demolition. The learned Judge directed HMC to take steps for implementation of the order dated December 30, 2022, in accordance with law, at the earliest but positively within a period of 12 weeks from the date of communication of the order of the learned Judge. Police assistance was provided for.

The appellants say that neither were they made parties to the writ petition nor were they heard by the Officers of HMC before the demolition order was issued on December 30, 2022. Although one Arup Mondal was representing the appellants as their Power of Attorney holder, in the proceedings before HMC, by a letter dated September 9, 2022, i.e., much prior to issuance of the demolition order, Arup Mondal had requested the concerned Assistant Engineer of HMC to give an opportunity of hearing to the appellants. Such opportunity was not given before passing of the demolition order.

Learned Advocate for the writ petitioner says that the appellants having been duly represented by their Power of Attorney holder in the proceedings before the concerned Assistant Engineer, the appellants cannot today contend that they have been deprived of an opportunity of hearing.

Mr. Banerjee, learned Advocate representing HMC, suggests, to avoid all future complications, without prejudice to the contention of HMC that the Power of Attorney holder of the appellants was duly heard by the concerned Assistant Engineer, HMC is willing to grant an opportunity of hearing to the appellants themselves tomorrow (21.12.2023) itself.

We think that the suggestion made by Mr. Banerjee is quite fair and will avoid all future complications.

Accordingly, we direct the Assistant Engineer, Borough-V, HMC, to hold a hearing in his chamber tomorrow (21.12.2023) at 12.30 p.m. No further notice of such hearing shall be served on the concerned parties. This order will serve as a notice. The appellants and the writ petitioner will be at liberty to attend such hearing and will be entitled to produce such documents as they may be advised. The Assistant Engineer shall pass a reasoned order after granting opportunity of hearing to the concerned parties as aforesaid. Till such a reasoned order is passed, no further coercive steps be taken by HMC in respect of the impugned construction.

Since no affidavit has been called for, the allegations in the stay application are deemed not to be admitted by the respondents.

MAT No.2047 of 2023 stands disposed of along with IA CAN 1 of 2023.

Urgent photostat certified copy of this order, if applied for, be supplied expeditiously after compliance with all the necessary formalities.

(Arijit Banerjee, J.)

(M. V. Muralidaran, J.)