
(2018) 06 CAL CK 0121

In the Calcutta High Court

Case No : MAT 248, 250 of 2018, CAN 1705, 1704 of 2018

Prasenjit Karar

APPELLANT

Vs

Amal Mondal & Ors.

RESPONDENT

Date of Decision : 11-06-2018

Acts Referred:

Howrah Municipal Corporation Act, 1980 — Section 177(1)

Citation : (2018) 06 CAL CK 0121

Hon'ble Judges : BISWANATH SOMADDER, ARINDAM MUKHERJEE J

Bench : Division Bench

Advocate : Sadhan Kumar Halder, Tapash Kumar Mondal, Mihir Kumar Das, Nimai Chandra Konar, Alok Kumar Ghosh, Rudranil De, Manani Roy, Sandipan Banerjee

Final Decision : Disposed Of

Judgement

Biswanath Somadder, J.

By consent of the parties, both the appeals are treated as on day's list and taken up for consideration along with the respective connected

applications. The two appeals have been filed by two brothers against a common judgment and order dated 29th January, 2018, passed by a learned

Single Judge in W. P. 3323 (W) of 2015 (Amal Mondal vs. The Howrah Municipal Corporation & Ors). Prasenjit Karar, being one of the brothers,

has filed an appeal, being MAT 248 of 2018, whereas the other brother Sujit Karar has filed another appeal, being MAT 250 of 2018.

When the two appeals were initially taken up for consideration, it was noticed that the learned Single Judge had disposed of the writ petition with a

direction upon the Howrah Municipal Corporation to cause demolition of the offending building within a certain timeframe, after giving a reasonable

notice to the private respondents in the writ petition (being the appellants herein). It was contended on behalf of the appellants before this Court that

after the demolition order was passed some time in the year 2014, the appellants had deposited the prescribed fees before the concerned authority of

the Howrah Municipal Corporation for the purpose of obtaining an "as made plan". Proof of receipt of payment has been annexed to the stay

application, which also includes a notice of payment of such fees, being a notice dated 29th September, 2014.

This Court had directed the concerned authority of the Howrah Municipal Corporation to file a report in the form of an affidavit stating therein

specifically with regard to the actual status of the matter and also whether any "as made plan" was approved by a competent authority of the

Howrah Municipal Corporation at a stage subsequent to passing of the order of demolition, upon acceptance of fees in terms of the notice dated 29th

September, 2014. A report in the form of an affidavit was subsequently filed by the Howrah Municipal Corporation. Such affidavit was affirmed by

one Mrinmoy Chandra who has stated in the said affidavit that he is an Assistant Engineer, Borough IV of Howrah Municipal Corporation. This report

in the form of an affidavit was affirmed on 8th March, 2018 and was taken notice of by this Court on 12th March, 2018.

The following paragraphs from the report in the form of an affidavit reveal, inter alia, that ultimately the issue regarding unauthorized construction was

placed before the Borough Committee in its meeting held on 25th September, 2014, wherein it was decided that the case for unauthorized construction

against the appellants was to be withdrawn on payment of appropriate retention fees: -

7(a) The unauthorized construction was detected and a stop-work notice under section 177(1) of the Howrah Municipal Corporation Act, 1980

was issued on June 17, 2014 in favour of the offender, Sujit Karar and a hearing notice was issued to the offenders, Sujit Karar alongwith Prasenjit

Karar, being the private respondent nos. 7 and 8 to the writ application and also the writ petitioner, Amal Mondal, on June 19, 2014.

(b) On the date of hearing, i.e. on June 25, 2014, the appellant therein, Prasenjit Karar, appeared and submitted before the HMC authorities that he has

constructed a single-storied building and admitted his fault and said Sujit Karar also submitted and admitted his fault stating that he has also

constructed G+2 storied building and the writ petitioner, Amal Mondal, stated before the authorities concerned that the offenders have constructed their buildings without any sanctioned plan.

(c) The said application was followed by self-demolition notice, so issued in favour of both the offenders, i.e. Prasenjit Karar and Sujit Karar, on August 13, 2014.

(d) After receiving the notice of self-demolition, both the offenders, Sujit Karar and Prasenjit Karar, submitted the "as made" plan against the said demolition proceeding on September 6, 2014 thereby specifying the actual area of unauthorized construction, where the appellant herein, Prasenjit Karar, declared that he has constructed unauthorized single-storied building with stairhead room measuring about 37.70 square meter and Sujit Karar declared that he has also constructed unauthorized G+2 storied building measuring about 51.728 square meter.

(e) The matter was then placed in the Borough Committee meeting for appropriate decision and in the meeting held on September 25, 2014, it was decided to withdraw the BMR case for unauthorized construction made by said Sujit Karar and Prasenjit Karar on payment of appropriate retention fees.

(f) The offender, Sujit Karar, deposited the retention fees amounting to Rs.61,180/- and Prasenjit Karar deposited the retention fees to the tune of Rs.46,080/- and both the deposits have been made on September 29, 2014.

Considering the factual aspect of the matter, which was culled out from the report in the form of an affidavit, this Court had stayed the impugned

judgment and order dated 29th January, 2018, passed by the learned Single Judge in W. P. 3323 (W) of 2015, on 12th March, 2018. Such stay was

directed to continue until further orders. Now at the time of hearing of the appeals, no new facts are forthcoming. Â Rather, it is now palpably

evident that the writ Court had proceeded to dispose of the matter without even looking into the records subsequent to the notice of self-demolition

which was issued way back on 13th August, 2014. Â As such, we are of the view that the interim order dated 12th March, 2018, is required to be

confirmed upon setting aside the impugned judgment and order dated 29th January, 2018. The impugned judgment and order dated 29th January, 2018,

is accordingly set aside.

We, however, make it clear that this order shall not preclude the private respondent in both the appeals, being the writ petitioner, Amal Mondal, to seek any statutory remedy open to him in accordance with law. Both the appeals and the respective connected applications stand disposed of accordingly. Urgent photostat certified copy of this order, if applied for, be given to the learned advocates for the parties.