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ITEM NO.42

COURT NO.4

SECTION XVI

S U P R E M E C O U R T O F I N D I A  
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (C) No(s).11834/2024

(Arising out of impugned final judgment and order dated 22-08-2023 in MAT No.1152/2023 passed by the High Court at Calcutta)

THE CUSTODIAN OF ENEMY PROPERTY FOR INDIA  
VERSUS  
MD. YAKUB @ MD. YAKUB ANSARI & ORS.

Petitioner(s)  
Respondent(s)

WITH

SLP(C) No. 12834/2024 (XVI)

(FOR CLARIFICATION/DIRECTION ON IA 191263/2024  
IA No. 191263/2024 - CLARIFICATION/DIRECTION)

Date : 17-09-2024 These petitions were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE SURYA KANT  
HON'BLE MR. JUSTICE UJJAL BHUYAN

For Petitioner(s) Ms. Aishwarya Bhati, A.S.G.  
Ms. Shreya Jain, Adv.  
Mr. Vasu Vats, Adv.  
Mr. Kanu Agrawal, Adv.  
Mr. Raghav Sharma, Adv.  
Mr. Devesh Tuli, Adv.  
Mr. Mukesh Kr.Singh, Adv.  
Mr. Arvind Kumar Sharma, AOR

Mr. Amit Sharma, AOR  
Mr. Dipesh Sinha, Adv.  
Ms. Pallavi Barua, Adv.  
Ms. Aparna Singh, Adv.

Mr. Kunal Malik, AOR

For Respondent(s) Dr. Monika Gusain, Sr.Adv.  
Ms. Binisa Mohanty, AOR  
Mr. Hariom Yaduvanshi, Adv.  
Mr. C.Solomon, Adv.  
Ms. S.Harini, Adv.  
Mr. Arjun Yaduvanshi, Adv.  
Ms. Moumita Mukherjee, Adv.  
Mr. Avi Dhankar, Adv.

Mr. Mainak Bose, Adv.  
Mr. Ratul Das, Adv.  
Mr. Soumya Dutta, AOR

Mr. Siddhant Upmanyu, Adv.

Mr. Srisatya Mohanty, Adv.  
Ms. Astha Sharma, AOR  
Mr. Himanshu Chakravarty, Adv.

Mr. Arvind Kumar Sharma, AOR

Mr. Kunal Chatterji, AOR  
Ms. Maitrayee Banerjee, Adv.  
Mr. Rohit Bansal, Adv.

Ms. Nandini Sen Mukherjee, AOR

UPON hearing the counsel the Court made the following  
O R D E R

1. These petitions have arisen out of interlocutory orders passed by different Division Benches of the High Court of Calcutta in the matters relating to demolition of unauthorized and illegal constructions raised at the property situated at 170, Keshab Chandra Sen Street, Kolkata-700009, which was declared as an enemy property under the provisions of the Enemy Property Act, 1968 as amended by the Enemy Property (Amendment and Validation) Act, 2017 (for short, 'the Act').

2. In SLP(C) No. 11834/2024, preferred by the Custodian of Enemy Property for India, the challenge has been laid to an order dated 22.08.2023 of the High Court, whereby it was directed that until the Municipal Building Tribunal (for short, 'the Tribunal') is constituted and the appeals are decided by that Tribunal, no coercive action shall be taken in respect of the building in question. The operation of that part of the High Court's order was stayed by us on 10.05.2024 with a clear direction to the Municipal Corporation as well as the Custodian of Enemy Property for India to proceed with the matter of identification of unauthorized constructions and their consequential demolition.

3. Thereafter, the order dated 03.06.2024, passed in SLP(C) No. 12834/2024, was brought to our notice whereby the parties were directed to maintain *status quo* with respect to the property/building, which was the subject matter of those proceedings. Since the continuation of that interim stay would have

led to passing of contrary orders by this Court, we modified that order on 09.08.2024 thereby directing the Calcutta Municipal Corporation to comply with the earlier order dated 10.05.2024 and continue with the demolition/eviction of the unauthorized construction/occupation strictly in accordance with the provisions of the Enemy Property Act, 1968 as amended from time to time. Vide this very order, the State of West Bengal was directed to constitute the Building Tribunal within one week.

4. In purported compliance of the order dated 09.08.2024, the State of West Bengal has appointed the Chairperson of the Tribunal. However, we are informed that in the absence of any judicial or technical member, the Tribunal is defunct. It seems to us that the State has not complied with our order dated 09.08.2024 in its true letter and spirit.

5. In the interest of justice, two weeks' time is granted to the State of West Bengal to appoint the judicial and technical members in accordance with the provisions of the Act and submit a Compliance Report before the Division Bench of Hon'ble the Chief Justice of the High Court at Calcutta, failing which we request the High Court to initiate contempt of court proceedings without any further delay.

6. The Order dated 22.08.2023, passed by the Division Bench of the High Court in MAT No.1152/2023, is modified to the extent it directed not to take any coercive step till the constitution of the Tribunal. In other words, the State of West Bengal, the Calcutta Municipal Corporation, the Custodian of Enemy Property for India and all other concerned authorities are directed to ensure that illegal and unauthorized constructions are immediately demolished as per the direction of the High Court and a compliance report is submitted before the Division Bench of the High Court, presided over by Hon'ble the Chief Justice.

7. The parties, who are aggrieved of the inordinate delay in constitution of the Tribunal and who have been deprived of their right to file statutory appeal, are relegated to approach the High Court for an appropriate relief. In any case, the time-bound

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directions for constitution of a functional Tribunal have already been issued. Their grievance to that extent, thus, stands redressed.

8. All these matters are, accordingly, disposed of leaving it open to the parties to approach the High Court, if so required. It is clarified that this Court has not granted any interim stay or a direction either to maintain *status quo* or to stop the demolition drive. In this regard, the directions issued by the High Court from time to time, shall be binding on the parties and any clarification, if so required, may be obtained from the High Court only.

9. Learned Chief Justice of the High Court is requested to list all the matters before his Division Bench, to avoid conflicting orders.

10. After appointment of the requisite members, the Municipal Building Tribunal shall take up the appeals arising out of the orders of demolition issued by the Executive Engineer of the Municipal Corporation, on priority basis and at the earliest.

11. It is clarified that we have not expressed any opinion on the merits of the controversy.

12. As a sequel to the above, the pending interlocutory application also stands disposed of.

(SATISH KUMAR YADAV)  
ADDITIONAL REGISTRAR

(PREETHI T.C.)  
ASSISTANT REGISTRAR