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IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL No. 10873 OF 2016

(Arising out of SLP(C) No. 28659 of 2015)

SATYABRATA BAIDYA

... Appellant(s)

Versus

J.M.THANGKHIEW AND OTHERS ... Respondent(s)

WITH

CIVIL APPEAL NO. 10872 OF 2016

(Arising out of SLP(C) No. 28686 OF 2016)

AJIT DASGUPTA

Appellant

Versus

J.M.THANGKHIEW AND OTHERS Respondent

O R D E R

Leave granted.

These appeals arise out of an Order dated 28.09.2015 passed by a Division Bench of the High Court of Meghalaya in PIL No. 1 of 2014 whereby the High Court has while dealing with several buildings allegedly violating the municipal by-laws directed that the top floor of the building constructed by the appellant herein shall be demolished as the same has been illegally constructed.

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The High Court has noted that several illegal constructions raised by several people in the city of Shillong were liable to be demolished and accordingly directed sealing and demolition of the same. The appellant herein who happened to be respondent No. 7 before the High Court in the writ petition had been granted permission to construct a building comprising ground + three floors. The High Court has found that instead of confining the building to ground + three, the appellant had illegally constructed an additional floor hereby violating the sanctioned building/plan. The High Court has given its reasons for holding that the building actually constructed by the appellant is ground + four and not ground + three as was permitted. The appellant has questioned the correctness of the said finding of the High Court.

We have heard learned counsel for the parties at some length who have taken us through the impugned order. There is no manner of doubt that the High Court has proceeded to direct demolition of the top floor of the building constructed by the appellant on the clear finding that the said floor violates the sanctioned building plan. Learned counsel for the appellant however argues that the High Court was not correct in coming to that conclusion keeping in view the topography

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of area where the building was raised and the technical compulsions which any construction on the site was faced with. Be that as it may, we do not intend to pronounce finally on the submissions made before us by learned counsel for the parties. In our opinion, the appropriate course would be to remit the matter back to the High Court for reconsideration of the question whether any part of the building raised by the appellant is illegal and, if so, whether unauthorised diversion from the building plan can be compounded or any other mitigating measures taken.

We accordingly allow these appeals, set aside the order

passed by the High Court to the extent the same relates to the building of the appellant herein and direct that the appellant shall be free to place before the High Court such further material as may possibly justify the construction raised by him. We make it clear that we have not expressed any opinion on the merits of the contentions urged before us. We further direct that while the High Court reconsiders the issue, the building constructed by the appellant shall continue to remain sealed subject to the ultimate outcome of the proceedings post remand.

With these directions these appeals are allowed and disposed of. The High Court may make an endeavour to

4 expedite the hearing and disposal of the matters. No costs.

.....CJI.
(T.S.THAKUR)

.....J.
(Dr.D.Y.CHANDRACHUD)

New Delhi,
Dated: November 15, 2016.

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ITEM NO.3+4 COURT NO.1 SECTION XIV
S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS
I.A. 1/2016 in Petition(s) for Special Leave to Appeal (C)
28659/2015
(Arising out of impugned final judgment and order dated 28/09/2015
in PN No. 1/2014 passed by the High Court Of Meghalaya)
SATYABRATA BAIDYA Petitioner(s)
VERSUS
J.M. THANGKHIEW & OTHERS Respondent(s)
(for appropriate interim orders/directions and office report)
with
I.A. 1/2016 in Petition(s) for Special Leave to Appeal (C)
28686/2015
(For appropriate interim orders/directions and office report)
Date : 15/11/2016 This application was called on for hearing today.
CORAM :

HON'BLE THE CHIEF JUSTICE
HON'BLE DR. JUSTICE D.Y. CHANDRACHUD
For Petitioner(s) Mr. Avijit Bhattacharjee, Adv.
Ms. Upma Shrivastava, Adv.
Mr. Ajoy Ghosh, Adv.
For Respondent(s) Mr. A.Rohen Singh, Adv.
Mr. Vivek Kumar, Adv.
Mr. Rajiv Mehta, Adv.
Mr. A.Henry, Adv.
Mr. Rajiv Mehta, Adv.
Ms. Madhumita Bhattacharjee, Adv.
Mr. K.Paul, Adv.
Mr. Rishi Matoliya, Adv.
Mr. K.Biharmia, Adv.

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

Leave granted.
The applications and appeals are allowed and disposed of

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in terms of the signed order.
(Shashi Sareen) (Veena Khara)
AR-cum-PS Court Master

(Signed order is placed on the file)