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10.09.2020
Ct. No.5
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IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE
(Via Video Conference)

WPA 6611 of 2020
with
IA No. CAN 1 of 2020
(CAN 5429 of 2020)

Debasish Chakraborty
Vs.
Midnapore Municipality & Ors.

Mr. Debabrata Saha Roy
Mr. Indranath Mitra
Mr. Pingal Bhattacharyya
Mr. Neil Basu
... For the writ petitioner

Mr. Anami Sikdar
... For Midnapore Municipality

Mr. Sakya Maity
... For the respondent no.4

Ms. Usha Maiti
... For the respondent no.5

This writ petition is taken up for hearing through video-conferencing in view of the urgency.

The application, being IA No. CAN 1 of 2020 (CAN 5429 of 2020), is disposed of.

By this writ petition the petitioner has challenged inaction on the part of the respondent nos.2 and 3 in proceedings against the petitioner who had allegedly made unauthorised construction over and above G+3 floors.

It is the contention of the petitioner that although there has not been any sanction and/or permission granted by the Municipality, but the promoters/developers have initiated construction of a multi-storeyed building on the premises. It is contended that several representations have been made before Midnapore Municipality but the authorities have not taken any action in terms of the provision of Sections 218, 219 and 223 of the West Bengal Municipal Act, 1993.

The petitioner relies on the decisions of the Hon'ble Apex Court with regard to his contention that no unauthorised construction can be permitted and the authorities also do not have power under the West Bengal Municipal Act, 1993 to regularise any unauthorised construction.

Mr. Sikdar, learned advocate appearing on behalf of the Municipality has submitted that a report prepared by the Sub-Assistant Engineer, by which the Administrator, Midnapore Municipality, was informed that some unauthorised construction/extension of the building by the respondent nos.4 and 5 has taken place during the lockdown period. It appears that on May 18, 2020, the respondent nos.4 and 5 had applied for extension of the building plan, but the said plan was pending before the Municipal authorities.

It is submitted by both Mr. Sakya Maity, learned advocate for the respondent no.4 and Ms. Maity, learned

advocate for the respondent no.5 that although all documents with regard to extension of floors up to the level of 6 had been filed before the Municipality authorities with all documents, the Municipal authorities have not taken any steps in the matter and sat tight over the matter.

However, whether the building is in violation of the sanctioned plan or not are to be decided by the Municipal authorities themselves. In this case, the Municipal authorities have found some unauthorised construction.

Thus, this writ petition is disposed of with a direction upon the Municipal authorities to take an inspection of the premises in presence of all parties and take steps in the matter on the basis of Sections 217 to 223 of the West Bengal Municipal Act, 1993.

It is needless to mention that the respondent nos.4 and 5 will be given an opportunity to place their entire case along with all documents before the authorities concerned in support of their claim that no unauthorised construction has been made.

The petitioner will also be given liberty to react to any document and/or prayers made on behalf of the respondent nos.4 and 5.

The proceedings should be completed within a period of eight weeks from the date of communication of this order and the orders should be served upon all concerned.

It is also clarified that the Municipal authorities will take all steps to see that unauthorised construction does not take place.

This Court has not decided on the merit of the complaint of the petitioner. It is also for the Municipality to decide on the issues of unauthorised construction as also on the issues raised by the respondent nos.4 and 5 with regard to their defence under Sections 207 and 208 of the said Act.

(Shampa Sarkar, J.)