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WPA 6823 of 2020

With
IA No. CAN 1/2020
(CAN 5823/2020)

(Via Video Conference)

Sudipta Das & Ors.
Vs.
The State of West Bengal & Ors.

Mr. Abhijit Roy,
Mr. Tanmoy Kumar Dey,
Mr. Samen Bhattacharya
... For the petitioners.

Mr. R. Das,
Mr. Kumar Dudhwewala
... For the private respondent.

The petitioners and the private respondent (Respondent no.7) are residents of the same apartment. The petitioners allege that the private respondent is converting his residential unit into a banquet hall for being exploited for commercial purpose. The petitioners further allege that despite repeated complaints, neither the municipal authority nor the police authority has taken any steps as against the private respondent.

There are two aspects of the matter – I) rights of the petitioners vis-à-vis the right of the private respondent in respect of the ownership, use and enjoyment of their respective units and the common areas and ammenities as members of the apartment, the other is the conversion of a residential

unit into a banquet hall for commercial purpose. In respect of the second issue the municipal authorities have an obligation to look into the matter for compliance of the municipal laws for the unit of the private respondent being converted into a banquet hall and used for commercial purpose. So far as the first issue i.e, *inter se* right of the petitioners and the private respondent, the same is civil in nature, the adjudication whereof is dependent on disputed questions of fact. The writ Court cannot go into such facts. So far as the issue of compliance of the municipal laws, the writ Court can exercise its jurisdiction directing the municipal authorities to see whether the relevant municipal laws are complied with by the private respondent while converting the residential unit into a commercial one.

It is submitted on behalf of the private respondent that Bidhannagar Municipal Corporation, being the respondent no.6, has issued a notice dated 12th September, 2020, directing the private respondent to stop the work. It appears from the said notice, a copy whereof is made over to the Court by the private respondent with a copy to the learned advocate for the petitioners, that the municipal authorities have issued the said notice against the private respondent directing him to show cause as to why an appropriate action shall not be initiated

against him in terms of section 272 read with section 266 of the West Bengal Municipal Corporation Act, 2006. It is apparent from the show-cause notice dated 12th September, 2020 that the municipal authorities have taken note of the complaint made by the petitioners.

Bidhannagar Municipal Corporation is therefor directed to take appropriate steps in the matter including initiation of legal proceedings as may be applicable against the private respondent in terms of the complaint of the petitioners and the show-cause notice dated 12th September, 2020 within 31st December, 2020 after affording the petitioners and the private respondent an opportunity to represent their respective cases. The municipal authorities shall be free in deciding the form of hearing to be given owing to the pandemic situation but they should ensure broad compliance of principle of natural justice.

Nothing further remains to be adjudicated in the writ petition and the same is disposed of along with the connected application.

Since I have not called for any affidavits, the allegations contained in the writ petition are deemed to have not been admitted.

Let a copy of the show-cause notice dated 12th September, 2020 be kept with the record.

Urgent photostat certified copy of this order, if applied for, is to be given to the parties upon usual undertakings.

(Arindam Mukherjee, J.)