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SK
Ct. No. 18
11.03.2021

(Via Video Conference)

R.V.W. No. 54 of 2020
CAN 1 of 2020 (application not in file)
CAN 2 of 2020 (application not in file)

Sankar Patel
Vs.
Avijit Dey & Ors.

With
C.O. No. 1484 of 2014
CAN 4 of 2015 (Old No. : CAN 7363 of 2015)

Shankar Lal Patel
Vs.
Uttarpara-Kotrung Municipality & Anr.

With
C.O. 4284 of 2016

Avijit Dey
Vs.
Uttarpara Kotrung Municipality & Ors.

Mr. Tapas Dutta,
Mr. Mritunjay Halder ... For the applicant.

Mr. Dipan Kumar Mukherjee,
Mr. Rajib Mukherjee,
Mr. Supriya Dey Baral,
Ms. Shreyasi Bhaduri
... For the Uttarpara Kotrung Municipality.

Re : CAN 4 of 2015 (Old No. : CAN 7363 of 2015)

This is an application for recalling of the order dated April 28, 2015 passed in C.O. 1484 of 2014.

The revisional application was disposed of by the said order.

The petitioner is seeking recall of the said order on the ground that he did not get the opportunity to present his case as the matter was taken up in his absence.

The ground of recall is not very convincing, but for ends of justice, particularly when it appears that the order impugned in the revisional application is wholly without jurisdiction, the order dated April 28, 2015 is recalled.

C.O. 1484 of 2014 is restored to its original file and number.

CAN 4 of 2015 (Old No. : CAN 7363 of 2015) is allowed.

No order as to costs.

Re : C.O. 1484 of 2014

The revisional application is directed against the order dated March 21, 2014 passed in Misc. Appeal No. 4 of 2013 by the 1st Court of learned Additional District Judge, Serampore, Dist. – Hooghly.

The petitioner lodged a complaint, complaining unauthorized construction by the opposite party no. 2 with the Uttarpara Kotrung Municipality, the opposite party no. 1 herein.

The opposite party no. 1 on April 27, 2012 passed an order of demolition, but the petitioner was not satisfied with the tenor of the said order and preferred an appeal before the 1st Court of learned Additional District Judge, at Serampore.

The learned District Judge by the order impugned has dismissed the said appeal.

Sub-section (3) of Section 218 of the West Bengal Municipal Act, 1993 provides an appeal against the

order of demolition passed by the Board of Councillors to a Court having jurisdiction.

The learned single Judge of this Court in the case of ***Amartya Mukherjee Vs. Board of Councillors, South Dum Dum Municipality***, reported in **2015 (4) CHN (Cal) 678** at **paragraph 30** has held as under :-

“I am of the considered view that since there is no specific empowerment given to the District Judge to hear the appeal under section 218(3) of the West Bengal Municipal Act, 1993, the District Judge ordinarily cannot be construed to be a Court having jurisdiction. Legislative intent is that the litigants at large may avail the forum of appeal before the lowest competent Court having jurisdiction being the Court of the Civil Judge (Junior Division). Had the intention of the legislature been to give appellate jurisdiction to a Court of District Judge under sections 218 (3) of the Act, the framer of the statute must have inserted the word Principal Civil Court to mean the Court of the District Judge in a district.”

Therefore, the forum of appeal under sub-section(3) of Section 218 of the West Bengal Municipal Act, 1993 being the Court of the Civil Judge (Junior Division), the order impugned is wholly without jurisdiction and is accordingly set aside.

The petitioner is free to prefer an appeal before the appropriate forum in accordance with law.

C.O. 1484 of 2014 is thus disposed of.

No order as to costs.

Re : R.V.W. 54 of 2020

In

C.O. 4284 of 2016

The petitioner is seeking review of the order dated February 7, 2020.

On perusal of the record it appears that no ground for review of the said order is made out.

R.V.W. 54 of 2020 is dismissed.

No order as to costs.

In view of disposal of the review application, the connected applications being CAN 1 of 2020 and CAN 2 of 2020 are also disposed of accordingly.

Urgent Photostat certified copy of this order, if applied for, be supplied to the parties subject to compliance with all requisite formalities.

(Biswajit Basu, J.)