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MAT 734 of 2020

Sailesh Kothari

Vs-

Prosenjit Sardar & Ors.

with

IA No. CAN 1/2020 & CAN 2 of 2020

(Via Video Conference)

Mr. Debajyoti Basu

Mr. Samit Bhanj

Mr. Subhrojit Sil

..... for the applicant.

Mr. Billwadal Bhattacharyya

Mr. Anish Kumar Mukherjee

..... for the writ petitioner/Respondent.

Mr. Debobrota Saha Roy

Mr. Arka Kumar Nag

Mr. Subhankar Das

..... for the Municipal Corporation.

Party/parties is/are represented in the order of their name/names as printed above in the cause title.

Since the appeal has been preferred from the impugned order by a third party, the appellant has sought for leave to appeal, which is allowed. Accordingly, the appeal is taken up for hearing.

The appellant before this Court claims to be prejudicially affected by the order impugned in this appeal dated 5th October, 2020 in WPA 7059 of 2020 with CAN 1 of

2020. The Hon'ble Single Bench which passed the order dated 5th October, 2020 at the instance of the writ petitioner/the respondent no.1 to this appeal and the stay application as well as in the presence of the Municipality and the State Authorities arrayed as respondents to this writ petition, *inter alia*, directed both the Municipal Corporation and the Police Authority to conjointly take action to restrain the alleged illegal construction being carried out at the behest of the present appellant in Ward No. 27, where the present respondent no.1/the writ petitioner is a Councillor of the Municipality.

Mr. Basu, learned Counsel appearing in support of the appeal takes the following points:-

First, the Hon'ble Single Bench acted in excess of its jurisdiction by directing the Police Authority to take steps to stop the construction work until further orders and to seize the construction material.

Second, the writ petitioner did not have a private interest for moving the writ petition and could not, even in his role as a Councillor, act as a busy body by interfering in the relationship which exists between the present appellant and the Municipality *qua* the construction activities being carried on by the present appellant within the Municipality area.

Third, the present appellant ought to have been impleaded as a party respondent to the writ petition and no adverse order could have been passed without affording the present appellant an opportunity to canvass his point before the Hon'ble First Bench. In support of his stand that the respondent no.1/the writ petitioner is a stranger to the issues raised in the writ

petition and therefore lacks locus to be before Court, Mr. Basu relies upon the authority of AIR 1976 SC 576 at Paragraphs 12, 36 to 59.

Per contra, it is submitted by Mr. Billwadal Bhattacharyya, learned counsel appearing for the petitioner/respondent no.1, Mr. Debobrata Saha Roy, learned Counsel appearing for the Bidhan Nagar Municipality (for short *BMC*) and Mr. Sirsanya Bandyopadhyay, learned Junior Standing Counsel representing the State, that it is well within the scope of the Municipal Authorities to act through its Councillor in bringing to the notice of the competent authority, i.e. the Municipality, instances of alleged illegal construction.

Mr. Bhattacharyya stresses the point that both in the *de jure* and *de facto* sense the Councillor represents the Municipality in the Ward from which the Councillor is elected.

Accordingly the Councillor/respondent no.1/writ petitioner has brought to the notice of the Municipality its inaction at being unable to control the alleged illegal construction in the Ward of the Councillor itself, which is Ward No. 27.

This Court finds sufficient force in the contention of Mr. Bhattacharyya on the above point.

Mr. Bhattacharyya cements his submission on the point of *locus* of the writ petitioner/respondent no.1 by

relying on *2013(5)SCC 336* at *Paragraphs 8 and 9* to show that the role of the Municipality has been sufficiently expanded to permit such enquiry and notice in order to preserve the general well-being of its local population.

Learned Counsel for the respondent no.1/the writ petitioner points out that it is not the case of the appellant that the basis facts pertaining to the issue of the stop work notice has been disputed. All that the writ petitioner has done is to highlight the inaction on the part of the Municipality to proceed with the stop work. It is submitted that the present appellant is required to answer the stop work notice which, from its language, can be read to be in the nature of a show cause.

This Court again finds no reason to take a view different from the stand taken by learned Counsel for the respondent no.1/the writ petitioner.

The role of the police in seizing the materials under directions of the Hon'ble Single Bench is vehemently resisted by Mr. Basu, learned Counsel, on an interpretation of the relevant provisions of the West Bengal Municipal Corporation Act, 2006 (for short the 2006 Act).

In the backdrop of the above discussion, this Court is of the considered view that further time requires to be saved in litigating the matter.

In the view of this Court there exists a stop work notice with an opportunity to show cause. In the further view of this Court it is within the domain and jurisdiction of the

Municipality to seek an answer from the appellant connected to the stop work notice. It is also the view of this Court that the appellant requires to answer such notice with full particulars not before this Court, but before the competent Municipal Authority.

This Court fixes a time limit for doing so.

It is directed that the competent Municipal Authority shall complete the process of hearing arising out of the stop work notice not later than a period of four weeks from the date of communication of this order by the appellant after giving an opportunity of hearing to all sides including the appellant through their authorised representatives, if and as advised, with the opportunity to submit their respective documents and to pass a reasoned order which shall then be communicated to each of the parties heard.

The order of the Hon'ble Single Bench is clarified to the extent that the police having now done their job by seizing the construction materials, till the stop work is finally decided by the competent authority the seized materials will now remain under the notional possession of the Municipality.

In the event, the petitioner wants to remove some, or all of the construction materials from the site in question, as stated in the seizure list, the petitioner shall be entitled to do so with prior permission of the Municipality and the police authority shall extend their co-operation.

The restraint order passed on the 5th of October, 2020 shall continue in all other respect till the disposal of the stop work notice as directed above.

Needless to reiterate that the competent Municipal Authority shall decide on the stop work on merits.

MAT 734 of 2020 along with CAN 1 of 2020 and CAN 2 of 2020 stand accordingly **disposed of**.

All concerned parties shall act in terms of the copy of the order downloaded from the official website of this Court.

Urgent xerox certified copy of this order, if applied for be supplied to the parties on usual undertaking.

(Aniruddha Roy, J.)

(Subrata Talukdar, J.)