

Court No. 24

10.03.2021

(Item No. 22)

(AB)

W.P.A 1303 of 2021

Krishnendu Roy

vs

The State of West Bengal & Ors.

Mr. Bhusan Kumar Jain

..... for the petitioner

Mr. Santanu Mitra

Ms. Rama Haldar

..... for the State

Mr. Dipankar Mondal

.... For Chakdaha Municipality

Mr. Tapas Kumar Bhattacharya

Mr. Aviroop Bhattacharya

..... for private respondent Nos. 7-9

The petitioner alleges that the order passed by this Court on 26th November, 2019 in W.P. No. 15261 (W) of 2019 has been flouted by the Chakdaha Municipality.

It appears from the documents annexed to the writ petition that in compliance of the order passed by the Court, the Chakdaha Municipality considered the case of the petitioner. An order was passed on 10th February, 2020 upon hearing the submissions of all the parties.

It has been recorded in the said order that one Swapan Kumar Roy erected first floor construction over the old ground floor. One Tapan Kumar Roy has been possessing the building in the first floor over the existing ground floor construction. One Suvendu Kumar Roy has carried out an additional construction without obtaining any sanction plan from the Municipality. All the unauthorized construction and repairing/renovation work was done over the very old construction, in the year 2019.

The said order further records that the private respondents prayed for regularization of the unauthorized construction in accordance with law. The Municipality specifically records that the building is a very old and fragile one. The repairing work/renovation and construction work is unauthorized.

Considering all the aspects, the Municipality thought it fit to allow the respondents six months' time to regularize the building plan and settle the disputes amongst the brothers in respect of any title dispute over the land. It further mentions that if no regularization is made within the aforesaid time period, then the unauthorized construction has to be demolished. If the order is not followed then the Municipality will initiate demolition of the construction after the expiry of the above time period.

According to the petitioner, as the Municipality has come to a specific finding that the construction is unauthorized, without any sanction plan, as such the Municipality ought to demolish the same.

The petitioner submits that the Municipality does not have any authority to regularize the building plan. Neither does the Municipality have any authority to direct the parties to settle the dispute amongst themselves.

The learned advocate appearing on behalf of the private respondents submits that the construction in question is a very old one. Necessary repair and renovation have been made in the said structure.

The private respondents raise issue of maintainability of the writ petition before this Court. It has been submitted that there is a provision for appeal, if any party is aggrieved by the order passed by the Municipality under Section 218 of the West Bengal Municipal Act, 1993.

The learned advocate appearing on behalf of the Municipality candidly submits that there is no provision in law for regularization of any unauthorized construction.

After hearing the submissions on behalf of the parties and upon perusal of the documents annexed to the writ petition it appears that there was an existing building with a sanction plan which was surrounded by three single storied building built by the previous owner. Construction thereof was made more than thirty years back. Presently the condition of the building is very fragile and it requires renovation/repairing works.

It appears that admittedly an additional floor has been constructed over the old ground floor. The said additional construction was made without obtaining necessary sanction as required in law.

The Municipality, however, after visiting the site in question and after considering the nature of the new construction has come to a considered opinion that the alleged unauthorized construction may be regularized if the respondents make an appropriate prayer for the same.

The learned advocate appearing on behalf of the private respondents submits that a prayer for regularization

of the unauthorized construction has been made within the time as specified in the order dated 10.02.2020.

Section 218 of the West Bengal Municipal Act, 1993 mentions that if the Board of Councillors is satisfied that the erection of any building or projection exists in violation of any condition, direction or requisition lawfully given or made under this Act or the Rules or the Regulations made thereunder, or there has been any material alteration of, or addition to any building, in breach of the provisions, then it may, after giving the owner of the building, a reasonable opportunity of being heard, make an order directing that the alteration, erection, addition or projection as the case may be, be demolished or alter and upon such order it shall be the duty of the owner to cause such demolition or alteration to the satisfaction of the Board of Councillors within the time as fixed.

In the instant case, the Municipality was of the considered opinion that the construction that has been made in addition to the existing old fragile structure may be regularized, provided an application for regularization is being made on that behalf. The application for regularization has duly been made and the same is pending consideration at the end of the Municipality.

The submission of the petitioner that the unauthorized construction is to be demolished right away cannot be accepted by the Court. Section 218 provides the Municipality, the option, either to demolish or to alter the

construction that has been made in addition to the existing structure to the satisfaction of the Board of Councillors of the Municipality. Accordingly, it is not necessary that the unauthorized construction has to be demolished in each and every case. The Municipality is vested with the authority to alter the same if required.

In view of the above, the prayer of the petitioner for demolition of illegal and unauthorized construction stands rejected. The Municipality will take necessary action strictly in accordance with the relevant rules/regulations while taking a decision with regard to the prayer for regularization of the unauthorized construction.

The Municipality is however restrained from entering into or deciding any civil private dispute in between the parties. The parties will be at liberty to agitate their civil disputes before the proper forum in accordance with law, if so advised.

The writ petition stands disposed of.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties upon completion of usual legal formalities.

(Amrita Sinha, J.)