

Item No.5

In The High Court At Calcutta
Constitutional Writ Jurisdiction
(via video conference)

15.03.2021
Ct-24

W.P.A.4266 of 2021
Prosenjit Sardar
v
The State of West Bengal & Ors.

Mr. Billwadal Bhattacharya
Mr. Anish Kumar Mukherjee
... for the petitioner.

Mr. Bibek Jyoti Basu
Mr. Uttam Kumar De
... for the State.

Mr. Debabrata Saha Roy
Mr. Arka Kumar Nag
Mr. Subhankar Das
... for the Bidhannagar Municipal
Corporation.

The primary contention of the petitioner is that the municipal authority has not acted in accordance with the direction passed by the Hon'ble Division Bench in MAT No. 735 of 2020 (Sanjay Kundu v. Prosenjit Sardar & Ors.) on November 12, 2020.

The Division Bench categorically directed the municipal authority to complete the process of hearing arising out of the stop-work notice

within a stipulated time frame. The Division Bench also directed that the restraint order passed by the learned Single Judge on October 5, 2020 shall continue in all other respects till disposal of the stop-work notice.

The petitioner complains that in spite of the restraint order passed by the Hon'ble Single Bench on October 5, 2020 confirmed by the Hon'ble Division Bench on November 12, 2020, the unauthorized construction is being carried on unhindered.

The respondents raise a preliminary objection with regard to the maintainability of the writ petition before the learned Single Judge. It has been submitted that the order passed by the learned Single Judge has merged with the order passed by the Hon'ble Division Bench and any violation thereof has to be decided by the Hon'ble Division Bench and not the learned Single Judge.

The learned advocate appearing on behalf of the petitioner submits that a fresh writ petition is maintainable in view of the on going

unauthorized construction being made. It has further been submitted that the proceeding for contempt will not be an alternative remedy to the filing of a writ petition for redressal of his grievances.

The learned advocate for the respondents harps on the principle of merger and submits that the learned Single Judge will not have the determination to execute the order passed by the Hon'ble Division Bench.

It appears from the submissions of the parties that the order of the learned Single Judge has merged with the order of the Division Bench. The petitioner has already issued a notice of contempt alleging violation of the order of the Hon'ble Division Bench.

In my opinion the writ Court ought not to interfere in this matter at this stage. The petitioner will be at liberty to approach the appropriate forum for redressal of his grievances, if so advised.

WPA 4266 of 2021 stands disposed of.

Urgent photostat certified copy of this order, if applied for, be given to the parties after completion of all legal formalities.

Sh

(Amrita Sinha, J.)