

Court No. 24

15.03.2021

(Item No. 7)

(AB)

W.P.A 4668 of 2021

Tarak Nath Halder

vs

The State of West Bengal & Ors.

Mr. Mrinal Kanti Ghosh

..... for the petitioner

Mr. Samiran Mandal

Mr. Abhinaba Dan

..... for Bankura Municipality

Mr. Santanu Kumar Mitra

Mr. Mirza Kamruddin

... for the State

Mr. Jiban Ratan Chatterjee

... for the Respondent No. 8

The petitioner prays for implementation of the direction communicated to the respondent No.8 by the Bankura Municipality on 3rd November, 2020 followed by reminder dated 2nd December, 2020.

A complaint was lodged by the petitioner before the Bankura Municipality alleging that an unauthorized construction had been made by the private respondent in the year 2018. The Bankura Municipality by a communication dated 28th January, 2019 intimated the private respondent that there is a report of construction of a ground floor building without taking any permission from the office and also violating the Municipal Act and the Rules. The private respondent was informed that there was an unauthorized cantilever at all sides of the said building which is totally illegal. The private respondent was earlier asked to stop the said illegal

construction work immediately by office memo dated 31st December, 2018. The private respondent failed to act in terms of the said stop work notice. The private respondent was directed to appear for a hearing on 5th February, 2019 before the Chairman of the said Municipality.

On 5th February, 2019 hearing was duly conducted and the private respondent was directed to demolish the illegal part of the construction. A further opportunity of hearing was allowed by the Chairman of the Municipality on 14th March, 2019.

By a communication dated 19th July, 2019 the private respondent was once again directed to demolish the illegal construction. As the private respondent did not act in accordance with the same a further notice was issued on 2nd March, 2020 directing demolition by the private respondent. None of the notices were acted upon by the private respondent.

A further communication dated 3rd November, 2020 was made again directing the private respondent to obey the order of demolition and to demolish the cantilever within three days. It was also intimated that if the demolition is not carried out within the stipulated time limit, the Municipality will demolish the same without any further information. It was mentioned in the said order that the unauthorized

portion was duly demarcated in the presence of the Amin of the private respondent on 16th March, 2020 after the hearing was given to the private respondent on 14th March, 2019.

A further communication followed dated 2nd December, 2020 requiring the private respondent to demolish the cantilever within three days. The same has not been acted upon till date.

The petitioner prays for a direction upon the Bankura Municipality to demolish the unauthorized construction.

The learned advocate appearing on behalf of the private respondent submits that his client was not intimated about the said illegal construction. It has further been submitted that no illegal or unauthorized construction was made by the private respondent.

The learned advocate for the Municipality submits that several notices were issued and repeated opportunities of hearing were given to the private respondent to defend such construction. In the presence of the private respondent and his Amin the unauthorized portions of the construction were demarcated. The learned Advocate for the Municipality submits that the private respondent was all along well aware of the directions passed upon him for demolition of the unauthorized construction.

It appears from the submissions of the parties and upon perusal of the documents annexed to the writ petition that the private respondent was given repeated opportunities to defend his case. The unauthorized portion was demarcated in the presence of the private respondent and his Amin. The fact that no hearing was given to the private respondent is not substantiated from records.

On the contrary, it appears that the representatives of the parties were duly heard and in their presence the unauthorized construction was demarcated. The order of demolition was also communicated to the parties. The principle of the natural justice has duly been taken care of by the Municipality prior to passing the order of demolition. Had the private respondent been aggrieved by the order of demolition then necessary steps ought to have been taken by him in proper time. Considerable period of time has elapsed from the date the order of demolition was passed.

Presently it appears that the order of demolition that has been passed by the Bankura Municipality is required to be implemented. The person responsible for making construction has not taken steps to demolish the same inspite of repeated directions. The Municipality had intimated the private respondent that in the event demolition is not

done by him, within the stipulated time frame, then the Municipality will demolish the same without any further information.

As the person responsible did not comply with the aforesaid order of demolition, accordingly, the Bankura Municipality is directed to take steps to demolish the unauthorized construction, in accordance with law, at the earliest, but positively within the period of eight weeks from the date of communication of a copy of this order.

The cost of the demolition shall be recovered from the person responsible for making such unauthorized construction.

The Inspector-in-charge of the Bankura Police Station (Sadar) being the respondent No. 7 herein is directed to render all necessary assistance to the officers of the Bankura Municipality at the time of complying the demolition work.

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.)