

24.11.2021
Item No.11.
Court No.6.
AB

Through Video Conference

F.M.A. No. 694 of 2021

With

I A CAN 1 of 2021

Netai Gorai

Vs

The State of West Bengal & Others

Mr. Jiban Ratan Chatterjee, Sr. Adv,
Mr. Sanjay Mukherjee,
Mr. Dhananjay Nayak ...for the Appellant.

Mr. Santanu Kr. Mitra,
Mr. Amritlal Chatterjee ...for the State.

Mr. Mrinal Kanti Ghosh ...for the Respdt. No.8.

Mr. Samiran Mandal,
Mr. Abhinaba Dan ...for Bankura Municipality.

The appellant before us is respondent no.8 in the writ petition.

The grievance of the writ petitioner relates to an alleged unauthorised construction made by the appellant.

The writ petitioner sought for the implementation of a direction communicated to the appellant by the Bankura Municipality on November 3, 2020 whereby the appellant was directed by the Municipality to demolish the construction as indicated in the said letter.

Learned Single Judge disposed of the writ petition giving a direction upon the Bankura Municipality to take necessary steps to demolish the construction impugned in the writ petition in accordance with law at the earliest but positively within the period of eight weeks from the date of communication of the said order. The Inspector-in-charge of the Bankura Police Station was also directed to render all necessary assistance to the officers of the Bankura Municipality at the time of complying with the demolition work.

The appellant suggests that the order of demolition was passed by the then Chairman of the Bankura Municipality whereas Section 218 of the West Bengal Municipal Act, 1993, mandates that a demolition order can be passed only by the Board of Councillors of a Municipality.

The Municipality fairly admits that the impugned order of demolition was passed by the then Chairman of the Bankura Municipality and not by the Board of Councillors. It has further been submitted that the Board of Councillors now has been superseded by the appointment of the Board of Administrators.

The writ petitioner refers to a letter dated January 17, 2019, addressed to the Municipality by

the appellant whereby he made a prayer for regularisation of the impugned construction.

We are of the view that since the order of demolition was passed by the then Chairman of the Bankura Municipality, the same cannot be sustained. An order of demolition in terms of Section 218 of the Bengal Municipal Act, 1993, can be passed only by the Board of Councillors upon being satisfied that the construction work has been carried out in violation of the West Bengal Municipal Act, 1993.

In view of the aforesaid, we set aside the order of the learned Single Judge and direct the present Board of Administrators to reconsider the grievance of the writ petitioner and dispose of the same in accordance with law. The Board of Administrators shall hear the appellant as well as the writ petitioner before taking any decision on the issue. It is desirable that the entire exercise should be completed within two months from date.

The appellant submits that his prayer for the sanction of a building plan in respect of the relevant premises is pending before the Municipality. The Board of Administrators while disposing of the issue shall also take into consideration the said fact.

With the aforesaid observations, the appeal being FMA No.694 of 2021 and the application being IA No. CAN 1 of 2021 are disposed of.

Let urgent photostat certified copies of this order, if applied for, be supplied to the parties after compliance with all the necessary formalities.

(Kausik Chanda, J.)

(Arijit Banerjee, J.)