

S/L 7
16.07.2021
Court. No. 19
GB

W.P.A. 11060 of 2021

Sailen Ghosh & Anr.
Vs.
The State of West Bengal & Ors.
(Through Video Conference)

*Mr. Ravi Ranjan Kumar,
Mr. Saket Sharma .*

...for the Petitioners.

Mr. Udaynarayan Betal.

...for the Respondent No.7.

*Mr. Narayan Chandra Bhattacharjee,
Mr. Sansul Kabir Humayan Reja.*

...for the State.

The writ petition has been filed challenging an order of demolition issued by the Executive Officer, Dankuni municipality in terms of Section 218 of the West Bengal Municipal Act, 1993.

According to the petitioners, the order was passed without affording a proper opportunity of being heard. The petitioners could not make their submissions before the authority concerned. Opportunity to place documents in support of their contention was not given. That the inspection was made and the order of demolition was also passed simultaneously on June 17, 2021. Hence, the order impugned dated June 17, 2021 should be set aside on three grounds, namely, a proper opportunity of hearing was not given to the petitioners, the order was vague, inconclusive and did not specifically mention the specifications of the

nature of unauthorized construction to be demolished and the order was issued by the Executive Engineer who was not a delegatee of the Board of Councillors.

Mr. Betal, learned advocate appearing on behalf of the respondent no.7 raises a question of maintainability of the writ petition. According to Mr. Betal, the order impugned in the writ petition being an order of demolition is an appealable order before the Court having jurisdiction.

Mr. Reja, learned advocate appearing on behalf of the police authorities, submits a report from which it appears that a civil suit is pending between the parties being Title Suit No.157 of 2021 in the court of the learned Civil Judge (Junior Division), 4th Court, Serampore. By an ad interim order of injunction, the petitioners have been enjoined from raising any further construction.

Be that as it may, the municipal authorities are empowered to take action against any unauthorized or illegal construction. It is also correct that the Court should have zero tolerance for any unauthorized construction. However, the law prescribes as procedure which has to be followed by the municipal authorities while passing an order of demolition of any unauthorized construction.

Although, the order impugned is an appealable order, in my opinion, alternative remedy shall not be a bar in this case. The order impugned is not a reasoned one. It is vague and lacking in material particulars. There is no specific mention about the nature and extent of the unauthorized

construction. Although, the inspection report reveals that a staircase has been constructed illegally, the order impugned does not mention anything about the floors or other constructions which have allegedly been made. The inspection report also does not bear the signature of the parties which raises a doubt as to whether the inspection was carried out properly in presence of the parties or not. Moreover, the petitioners and the respondent no.7 ought to have been given an opportunity to place their entire submissions along with supporting documents at the hearing. The order impugned does not reveal that any proceeding was actually held and the entire issue was disposed of in a day, in a very casual manner. Lack of reasons and the hurried disposal of the matter on a single day shows that the petitioners did not get a reasonable opportunity of being heard.

Under such circumstances, this Court is of the opinion that the principles of natural justice as also the procedure to be followed in a demolition proceeding were not adhered to.

Under such circumstances, the order impugned is set aside. The competent authority of the Dankuni municipality shall initiate the entire process de novo.

It is made clear that the authority empowered under the Act shall act and proceed in accordance with law. The question of competence of the Executive Engineer to issue an order of demolition has also been raised. The municipal authority shall make an inspection in presence of both the

parties. Their signatures shall be obtained in the minutes of the meeting of the inspection. A copy of the inspection report shall be supplied to both the parties and once the parties are allowed to understand and consider the inspection report, a hearing shall be held upon giving an opportunity to all the interested parties to place their respective cases with supporting documents. Thereafter, a reasoned order shall be passed and communicated to all concerned. If it is found that there has been unauthorized construction, then appropriate steps shall be taken by the municipality in accordance with law.

The entire exercise shall be completed within a period of eight weeks from date of communication of this order. As there is already an order of injunction of the civil court injuncting the petitioners from raising any further construction, this Court does not pass any further restrictive order on the petitioners save and except that the petitioners shall abide by the order of the civil court.

This Court has not gone into the merits of the claims and counter-claims of the parties.

Accordingly, the writ petition is disposed of.

However, there will be no order as to costs.

All the parties are directed to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)