

23.11.2021
Sl. No.4
srn

W.P.A. No. 17386 of 2021
Khagendranath Naskar
Vs.
The State of West Bengal & Ors.

Mr. Uday Sankar Chattopadhyay,
Mr. Santanu Maji,
Ms. Snigdha Saha,
Mr. Pronay Basak

...for the Petitioner.

Mr. Sounak Bhattacharya

...for the Respondent No.10.

Mr. Tapan Kumar Mukherjee,
Mr. Somnath Naskar

...for the State-respondents.

The writ petitioner is the owner of a premises situated at Holding No.495/A, Kulpi Road, Ward No.15, Baruipur Municipality. The allegation of the petitioner is that the Chairperson, Board of Administrators, Baruipur Municipality has been insisting on production of the sanctioned building plan by the petitioner and is also proceeding in a manner detrimental to the interest of the petitioner.

Challenge has been made to an order dated September 20, 2021, by which the Chairperson, Board of Administrators directed the petitioner to produce documents including sanction plan in support of the construction on the premises in question. It is the specific case of the petitioner that the

petitioner is an auction purchaser. The premises was purchased at an auction held by Indiabulls Housing Finance Limited pursuant to a proceeding under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as the SARFAESI Act). The sale certificate in support of such contention is annexed to the writ petition.

The contention of the petitioner is that when the property was purchased from Indiabulls Housing Finance Limited, that is, from the secured creditor, no sanction plan was provided. Thus, according to the petitioner, the Chairperson, Board of Administrators arbitrarily and in an unreasonable manner, without understanding the fact situation, insisted on production of the sanction plan.

Contrary to such argument, Mr. Bhattachaya, learned Advocate appearing on behalf of the respondent No.10, submits that the writ petition is premature. That no order has been passed adverse to the interest of the petitioner. The petitioner has just been asked to produce the sanction plan and other documents in support of the construction. He further submits that the petitioner purchased the property at his own risk and the law shall follow its own course. Just because the petitioner is an auction purchaser, the petitioner cannot be allowed to continue with the unauthorised construction.

I have heard the learned Advocates for the respective parties.

There is no doubt that the property was purchased at an auction held by a secured creditor pursuant to a proceeding under the SARFAESI Act. It is also likely that the sanction plan may not have been supplied to the purchaser. However, the municipal authority is the custodian of all the records and every municipality maintains the records of sanction granted to the premises when applied for by the prospective builders. The Court also accepts the contention of Mr. Bhattacharya that the hearing is at a preliminary stage. There is no adverse order as yet. The contention of the petitioner that the sanction plan may not have been supplied to the petitioner at the time of purchase is reasonable and the petitioner may not be in a position to submit the plan. Although all other documents which are required to be submitted by the petitioner pursuant to the purchase must be produced before the municipality. The municipality shall take out the sanction plan from its own records in respect of the premises in question over which the petitioner claims right, title and interest and thereafter proceed on the basis of the documents which are with the municipality and which shall be produced by both the parties. The proceeding must be reached to its logical conclusion.

As it appears that both the parties have alleged unauthorised construction by each other and two separate orders have been passed by the court for the proceedings to be initiated by the municipality, the parties shall appear before the municipality and the proceedings should be concluded in a free and fair manner. Neither of the parties shall be forced and coerced into making such submission and doing such acts which are not permitted by law and none of the parties should feel that the authority is biased.

As the proceedings pending before the municipality are with regard to the construction of both the petitioner as also the respondent No.10, the municipality shall dispose of the entire issue and ensure that no unauthorised construction takes place during the pendency of the proceedings.

The entire exercise shall be completed within a period of three months from the date of communication of this order.

This writ petition is, thus, disposed of.

There will be no order as to costs.

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

(Shampa Sarkar, J.)