

D/L
Item No. 20
06.12.2021
KOLE

**MAT 1290 of 2021
With
IA No. CAN 1 of 2021**

**Krishna Biswas
-Vs.-
The State of West Bengal & Ors.**

*Mr. S. Chatterjee,
Mr. D. Das,*

...for the appellant.

*Mr. N. C. Bhattacharyya,
Mr. Syed. N. Hossain,*

...for the State.

Mr. Suman Basu,

...for the Corporation.

By consent of the parties, the appeal and the application are taken up for hearing together.

One Shanti Sarkar on an earlier occasion filed a writ petition before this Court praying, *inter alia*, for a direction upon the Chandernagore Municipal Corporation to take necessary steps for demolition of an unauthorized construction allegedly raised by the present writ petitioner/appellant. The said writ petition was disposed of on September 30, 2019, by a Single Bench of this Court with a direction upon the Chairman of the Chandernagore Municipal Corporation to take a decision in accordance with law with regard to the complaint lodged by the petitioner on May 21, 2019, within a period of six weeks from the date of communication of the order and after giving an opportunity of hearing to the petitioner or his authorized representatives.

Pursuant to such order passed on September 30, 2019, the said Municipality passed an order of demolition on October 20, 2021.

This writ petition has been filed challenging the said order of demolition.

Learned Single Judge by the order impugned before us disposed of the said writ application giving, *inter alia*, the following directions:-

“The Commissioner, Chandernagore Municipal Corporation, who is the competent authority empowered under the West Bengal Inland Fisheries Act, 1984 shall initiate a proceeding with regard to the allegation filling up of the pond and dispose of the same by hearing the petitioner and the added respondent, who claim to be the recorded owner of R.S. Plot No. 280 and pass necessary orders in accordance with law thereby reaching the proceedings to its logical conclusion.

The State respondents are at liberty to initiate proceedings as permissible under the law against such illegal for filling up the pond under the relevant statutes.

The dispute with regard to the title in respect of the plot no. 281 and 280 are issues in two civil suits between the parties and shall not be affected in any way with the order of demolition as the subject matters in said suits are for declaration of right, title, interest and eviction respectively.

This order is being passed exclusively with regard to the allegation of unauthorized construction on a water body but the question of title or encroachment has not been gone into.”

It appears that before the writ petition was finally taken up for hearing, the learned Single Judge on November 9, 2021 had passed a direction upon the Corporation to visit the relevant locale to make an inspection and to file a report. It was, further, directed that the relevant Block Land and Land Revenue Officer should also send a surveyor to

ascertain whether the construction was actually over a water body or not. The said authorities accordingly filed their reports before the learned Single Judge.

Before us it has been submitted by Mr. Sabyasachi Chatterjee, learned advocate, appearing for the writ petitioner/appellant that the writ petition was disposed of without granting the appellant any opportunity of filing any affidavit.

It is further submitted by Mr. Chatterjee that the learned Single Judge has failed to appreciate that order of demolition was also passed by the Municipal authority without giving any opportunity of hearing to the appellant.

Mr. Basu, representing the Chandernagore Municipal Corporation refers to the report of the Municipal Corporation filed before the learned Single Judge to show that due notices were served upon the appellant before the order of demolition was passed. Referring to a letter dated March 6, 2020, annexed to the said report, Mr. Basu submits that the said letter evidences the fact that the petitioner appeared before the Commissioner in the demolition proceedings.

We are unable to accept the submission of Mr. Chatterjee that his client was not given any opportunity of hearing before the Commissioner prior to passing the order of demolition. It appears from the report filed before the learned Single Judge that the notice was duly served upon her. We also cannot permit Mr. Chatterjee to argue that the appellant was not given opportunity to refute the contents of

the said report since it does not appear that any prayer was made before the learned Single Judge to allow the appellant for controverting the contents of the said report, though admittedly, the said report was served upon the appellant beforehand.

Mr. Chatterjee, however, could not demonstrate before us that the constructions in question had been carried out after taking due permission from the Municipality authority or any other competent authority.

It appears from the order impugned that the appellant gave an undertaking before the learned Single Judge to demolish the unauthorized construction but the said undertaking was not complied with. The learned Judge specifically came to a finding that some unauthorized constructions have been made by filling up a water body, and direction has been passed by the learned Single Judge for demolition of such construction. We do not see any infirmity in the order passed by the learned Single Judge.

In that view of the matter, the appeal being MAT 1290 of 2021 and the connected application being CAN 1 of 2021 are dismissed.

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

(Arijit Banerjee, J.)

(Kausik Chanda, J.)