

D/L
Item No. 36
24.12.2021
KOLE

**MAT 1387 of 2021
With
IA No. CAN 1 of 2021**

**Sri Chanchal Kumar Das
-Vs.-
The State of West Bengal & Ors.**

*Mr. Arabinda Chatterjee, Sr. Adv.
Mr. Ranjan Saha,
Mr. Amit Halder,
Mr. N. B. Mondal*

... for the appellant.

*Mr. Jahar Lal De,
Mr. Shamim-ul-Bari*

... for the State.

Mr. M. Anuruzzaman,

... for the Municipality.

*Mr. A. K. Gayen,
Mrs. A. A. Gayen,*

... for the private respondent.

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

The appellant before us was the private respondent no. 7 in the writ petition being W.P. No. 9041 (W) of 2015 and the respondent no. 8 was the writ petitioner.

The said writ petition was disposed of by an order dated 17th August, 2016, by the learned Single Judge with the following directions:-

“Since in spite of notice, none appears on behalf of the respondent no. 7 and the authorities of the Rajpur-Sonarpur Municipality have categorically admitted that the construction is an unauthorized one, there is no point in keeping the writ petition pending. The writ petition is disposed of by directing the Board of Councillors, Rajpur-Sonarpur Municipality to complete the proceeding under Section 220 of the Act as expeditiously as possible, but preferably within a period of eight week from the date of communication of this order in accordance with law and the formalities required to be complied with.

In case the Board of Councillors come to conclusion that the construction had been an unauthorized one, they shall pass the necessary and consequential orders under Section 218 of the West Bengal Municipal Act including the order of demolition, if necessary.

The respondent no. 7 shall maintain status quo with regard to the construction made by him, as alleged, without the permission of the Municipal authorities in writing.

Since this writ petition is being disposed of without calling for an affidavit all allegations made in the writ petition are deemed to have been denied.

There shall be no order as to costs.”

After the said order was passed, the Board of Councillors of the Rajpur-Sonarpur Municipality took up the matter for consideration and by an order dated November 28, 2016, directed as follows:

“Under the circumstances, you are hereby requested to demolish your building within seven days from the date of receipt of this notice positively. If you fail to demolish your illegal and unauthorised construction building situated at East Balia Community Park, Ward No. -01 within the jurisdiction of this Municipality, the Municipal Authority shall demolish your illegal and building without further reference you and the cost for such demolition shall be recovered from you as arrear Municipal Tax in respect of your said property which please note. ”

It appears that after the said order was passed by the Board of Councillors, the present contempt application was filed alleging violation of the said order dated August 17, 2016, by the concerned Municipality.

On the said contempt application, the learned Single Judge passed, *inter alia* the following orders.

“Since a proceeding was initiated under Section 220 of the West Bengal Municipal Act, 1993 and the Board of Councillors came to the conclusion

that building constructed by the contemnor/respondent no. 4 was unauthorized, therefore, contemnor/respondent no. 4 was directed to demolish illegal and unauthorized building within seven days. since the same has not been demolished in terms of the decision of the Board of Councillors, the obligation casts upon the concerned authority of Rajpur-Sonarpur Municipality to take steps for demolition of the unauthorized and illegally constructed building in terms of their own order dated 28th November, 2016.

Therefore, this Court directs the Rajpur-Sonarpur Municipality to immediately demolish the illegally constructed building in terms of the order of this Court dated 17th August, 2016, if it is not demolished by this time and file an affidavit of compliance on the returnable date.”

The said order dated December 17, 2021, has been impugned in this appeal.

It is the case of the appellant that the learned Single Judge while deciding the contempt application, could not go beyond the original order passed in the writ petition. In support of his submission, Mr. Chatterjee, learned advocate for the appellant, relies on a judgment of the Hon’ble Apex Court in the case reported at **(2006) 5 SCC 399 (Midnapore Peoples’ Coop. Bank Ltd. v. Chunilal Nanda)**.

We are unable to accept the contention as advanced by the appellant before us. The order passed on the writ petition clearly ordained that if the construction in question was found to be unauthorized, then that had to be demolished.

The order passed on the contempt application, in our view, does not at all go beyond the scope of the said order dated August 17, 2016.

Mr. Chatterjee, however, submits that before the Board of Councillors the appellant was not given any opportunity of hearing. He, further, suggests that the order of demolition of alleged unauthorized construction had not been communicated to the appellant.

Mr. Mir Anuruzzaman, learned advocate for the Municipality, however, denies such submissions. He categorically submits that the appellant had been duly given an opportunity of hearing by the Board of Councillors and the order of demolition was also duly communicated to the appellant.

We are not inclined to delve into all these questions. All that we can say is that the appellant is at liberty to challenge the order of demolition that had been passed by the Board of Councillors on November 28, 2016 taking all points available to him, if he is entitled to do so in law.

With the aforesaid observations, the appeal, being no. MAT 1387 of 2021 and the stay application, being no. CAN 1 of 2021 are disposed of.

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

(Arijit Banerjee, J.)

(Kausik Chanda, J.)