

04.01.2021
Item No. 27
Ct. No.4
PG

W.P.A. 19035 of 2019
With
I.A. No. C.A.N. 2 of 2020
(Old C.A.N 727 of 2020)
(Via Video Conference)
Netai Das
Vs.
The Bongaon Municipality & Ors.

Mr. Kalyan Bandyopadhyay
Ms. Sutapa Sanyal
Mr. Triptimoy Talukdar.....for petitioner

Mr. Saptanshu Basu
Mr. Sayan Sinha.....for Bongaon Municipality

Mr. Bandyopadhyay, learned senior advocate appears on behalf of petitioner in support of challenge to impugned memo dated 20th September, 2019 directing petitioner to demolish the construction. Interim order was obtained by petitioner and affidavits have been filed.

He draws attention to notice dated 11th September, 2019 to submit, allegations in the alternative were made therein. His client was told that the construction was not pursuant to plan or not as per it. He then draws attention to hearing notice dated 13th September, 2019, in which was said, inter alia, that it had been observed in routine enquiry that a building is being constructed and petitioner could not submit any sanctioned plan. Petitioner was called for hearing with necessary documents. Petitioner

submitted copy of sanctioned plan under cover of letter, received by the Municipality on 17th September, 2019. Hearing was given to petitioner and then impugned order.

Mr. Bandyopadhyay demonstrates from impugned order that there could not be and it does not appear on the face of it that the Board of Councillors formed opinion or were satisfied that erection of the building by his client was hit by any of the sub-clauses under clause (a) in sub-section (1) of section 218, West Bengal Municipal Act, 1993. It cannot be disputed that his client has sanctioned plan. No particulars of deviation appears as in impugned notice nor is there any finding or satisfaction of the Councillors that construction of the building was carried on in breach of any provision contained in the Act or Schedule or Rules framed thereunder. He submits, impugned notice should be set aside and quashed.

Mr. Basu, learned senior advocate appears on behalf of the Municipality. He refers to rule 23 in West Bengal Municipal (Building) Rules, 2007. The rule is quoted below :

“23.Duration and expiry of sanction of building plan.— (1) A sanction to erect a building accorded under these rules shall be valid for three years from the date on which it is sanctioned and may be renewed thereafter for a further period of two years on payment, in cash or bank draft, or such fee as may be determined by the Chairman-in-Council on the basis of rule

24, and on production of the previously sanctioned building plan. A building plan may be revalidated for a further period of 5 years only in case a building has been partly completed and occupancy certificate in terms of rule 34 has been issued as well as on production of the previous sanctioned building plan, the completion certificate and on receipt of fees subject to minimum of 25% and maximum of 50% of sanction for construction of building fee required to be paid as to be determined by the municipality from time to time.

(2) The erection of a building or work shall be completed within the period specified by the Board of Councillors under section 211."

He then draws attention to sections 211, 212 and 218. He submits, his client does not dispute that a plan was sanctioned on 18th August, 2005. The construction is being made now, after lapse of the plan. Mr. Basu further submits, construction is not accompanied by completion certificate that is mandated to be obtained under section 212. Petitioner, in constructing after lapse of the plan, is constructing without a plan and therefore, there should be no interference on impugned order directing demolition.

Court has perused impugned order.

Following from it is reproduced below:

"In the said hearing on 17.09. 2019 before the Board of Councillors of this Municipality you could not submit any document and/or documents, approved building plan in favour of the said construction. In the said hearing, you stated that the construction was made in between the year 2005 to 2008 after obtaining sanctioned building plan from the Bongaon Municipality passed on dated 18.08.2005. However the concerned SAE of this Municipality has reported that the entire

construction is made more or less within one year. Finally you have admitted during the said hearing that the construction is made recently and there is no sanctioned building plan in favour of the said construction at the said property at holding no. 280/278, Dag No.1367, 1368, 1369, Kh. No.-1159/1, 107 Joypur Mouza, total construction area-more or less 14000 Sq.ft.”

So far as the substantive provisions are concerned, impugned order does not give particulars of life of the plan, which the Board of Councillors were mandated under section 211, to specify. Rule 23 provides for procedure of renewal of plan on expiry of specified period of it. The Municipality is entitled to obtain fees in granting the extension.

Provision in section 218, particularly in clause (a) under sub-section (1) is argued to be the basis of issuance of impugned notice. Sub-clause (i) under clause (a) says as follows:

*“(a) that the erection of any building—
(i) has been commenced without
obtaining sanction or permission under the law, or
.....”*

Court does not find reference to above sub-clause in impugned notice. Submissions of Mr. Bandyopadhyay made on clauses (ii) and (iii) went undisputed. Impugned order has obviously been issued without basis. It is set aside and quashed.

The writ petition is allowed as above. Connected application (C.A.N. 727 of 2020) is also disposed of.

(Arindam Sinha, J.)