

01.03.2021
SL No. 27
Court No.24
(P.M.)

WPA 23443 of 2019

**Pally Kalyan Samity & Ors.
Vs.
The State of West Bengal & Ors.**

Mr. Ejaj Khan
... for the petitioners

Mr. Dibyendu Chatterjee,
Mr. Pritam Majumdar
... for the Municipality

Mr. Sunny Nandy,
Mr. Tamal Singha Roy,
Mr. Subha Pathak
.... For the State.

The Court in W.P. No. 24614(W) of 2018 passed an order on 16th January, 2019 directing the Bhatpara Municipality to initiate a proceeding under Section 218 of the West Bengal Municipal Act, 1993 within a specified time.

The Board of Councillors of the Municipality, allegedly in compliance of the order passed by the Court, has taken an unanimous decision in its hearing held on 27th May, 2019 and decided to demolish the unauthorised encroachment over the public property at the land bearing L.R. Dag No. 150, R.S. 146, Khatian L.R. 726/1, Mouza Basudevpur, J.L. 23 in accordance with the provisions of Section 218. The decision was taken to issue notice in favour of the encroacher giving thirty days time for removing the encroachment and in case of failure to remove the encroachment within the stipulated time the

Municipality would take steps for demolition of the unauthorised construction and realise necessary fees/charges from the encroachers.

The Charmin of the Municipality was authorised to take follow up action in this matter.

It appears that a notice was issued to the petitioner for removal of the unauthorised construction. The petitioner is aggrieved by the said notice.

The petitioner submits that from the record of rights it appears that Rahuta Panchayet is the raiyat in respect of the land in question.

It has further been submitted that decision to demolish was taken by the Executive Officer of the Bhatpara Municipality which ought to have been taken by the Board of Councillors of the Municipality.

Both the aforesaid contentions of the petitioners to challenge the impugned order of demolition cannot be accepted by the Court.

A report has been filed by the Municipality wherefrom it appears that the decision to take steps in accordance with Section 218 of the Act was adopted unanimously by all the members of the Board of Councillors of the Municipality. The same was not an independent or unilateral decision of the Executive Officer of the Municipality as alleged by the petitioners.

With regard to the allegation that the land belongs to the Panchayet and the Municipality does not have a role in

the matter an order dated 14th September, 1995 bearing No. 1012/Panch. XIX(S)/118A/95 of the District Magistrate, North 24-Parganas and the Prescribed Authority has been placed in Court, wherefrom it appears that Rahuta I and Rahuta II Gram Panchayet has been vested with the Commissioners of the Bhatpara Municipality.

Accordingly the Municipality is the competent person to take steps with regard to the complaint that has been filed by the complainant under Section 218 of the West Bengal Municipal Act, 1993.

Moreover, it appears from the record of rights that the unauthorised construction has been made by the petitioners over the land which is recorded as 'rasta'. Under any stretch of imagination, no construction can be permitted to be made over a public road.

An opportunity of hearing was given to the petitioners on 27th May, 2019 and it is only thereafter the order of demolition was passed.

Accordingly, the instant writ petition is disposed of by directing the Bhatpara Municipality to take steps for removal of the unauthorised encroachment as per the resolution adopted by the Board of Councillors and conclude the demolition proceeding at the earliest, but positively within a period of three months from the date of communication of a copy of this order.

The report of the Bhatpara Municipality is retained with the records.

WPA 23443 of 2019 stands disposed of.

Urgent photostat certified copy of this order, if applied for, be given to the parties on completion of usual formalities.

(Amrita Sinha, J.)