

18.01.2021

Item No. 04

Crt. No. 11

b.r.

MAT 678 of 2020

with

IA No. CAN 1 of 2020

CAN 2 of 2020

Sk. Ibrahim & Anr.

-vs-

The Bhadreswar Municipality & Ors.

Mr. Syed Nurul Arefin

..... For the appellants.

Mr. Somnath Roy

..... for the Respondent Nos. 1 to 3.

Mr. Subhasis Panchal

Mr. Sujit Chowdhury

,..... For the Added Private Respondent.

Mr. Subhrangshu Panda

..... for the Private Respondent No. 4 to 7.

The writ petitioners are the appellants in the instant appeal. The instant appeal is directed against the order passed by a learned Single Judge on September 30, 2020 in WPA No. 7027.

By the impugned order, the prayer for interim relief was rejected and the parties were directed to exchange their affidavits.

The writ petitioners challenged the Memo dated July 16, 2020 issued by the Chairperson, Board of Administrator, Bhadreswar Municipality whereby the appellants were directed to demolish the unauthorised construction made in the Holding No. 5, Musalmanpara

Lane-2 within Ward No.12 under the Bhadreswar Municipality failing which the Municipality will take steps to demolish the same.

The principal grievance of the writ petitioners/appellants is that the Chairperson, Board of Administrator directed the appellants to demolish the unauthorised construction at the said holding without indicating the extent of such unauthorised construction.

An application for addition of party being CAN 2 of 2020 has been filed in the instant appeal praying for impleading the applicant as a party respondent on the ground that the order for demolition of the unauthorised construction was passed by the Chairperson, Board of Administrator, Bhadreswar Municipality on the basis of the objection filed by him. The applicant in CAN 2 of 2020 claims to be the adjacent owner and allege that the appellants herein have made unauthorised construction at the premises being holding No.5, Musalmanpara Lane-2. The applicant claims to have made an allegation of encroachment of the property of the applicant in the objection submitted before the Municipal Authority.

Since the applicant claims to be the adjacent owner of the property in question and the appellants were directed to demolish on the basis of such complaint, the applicant is a necessary party to this appeal.

The application for addition of party, being CAN 2 of 2020, is thus allowed and the said applicant is added as a party respondent in the instant appeal.

The learned Advocate for the appellants is directed to supply a copy of the writ petition, and the stay application upon the learned Advocate for the added respondent, if not already served.

The appeal is taken up for immediate consideration and the learned Advocates argued in support of and against the appeal.

Mr. Arefin, the learned Advocate for the appellants contends that the show-cause notice do not mention the particulars of deviations that are alleged to have been made by the appellants while making construction at the said holding. He also submits that the said show-cause notice is bad in the eye of law as the same was issued in the name of his father who was already dead at the time of issuance of such notice.

Mr. Arefin, learned Advocate, further contends that the authority directed the petitioners to demolish the unauthorised construction without specifying the extent of such construction which is required to be demolished. Thus, according to Mr. Arefin, the said order is a vague one and the same should be set aside.

Mr. Roy, Learned Advocate for the Municipality submits that the letter dated July 16, 2020 was issued to the writ petitioners/appellants directing them to demolish

the construction which was admitted by the appellants in course of hearing on 15.07.2020 to be an unauthorised one. He, however, submits that no proceedings under Section 218 of the West Bengal Municipal Act has been initiated for demolition of the construction in question.

The learned advocate for the appellants, however, has denied that the appellants have made any such admission in course of the hearing before the Chairperson, Board of Administrator on July 15, 2020.

Mr. Panda, the learned Advocate appearing for the respondent nos. 4 to 7 supports the case of the appellants. He submits that no unauthorised construction has been made at the premises in question.

Mr. Panchal, the learned Advocate appearing for the added respondent submits that the appellants have made unauthorised construction at Holding No. 5, Musalmanpara Lane-2. He also submits that the appellants have also encroached upon the property of the added private respondents. The added respondent claims to be the adjacent owner of the property in question. The learned Advocate for the added respondent supports the order of demolition passed by the Municipality. He further submits that the plan on the basis of which the appellants claim to have raised construction has already been cancelled and, as such, the construction of the writ petitioners/ appellants is an illegal and unauthorised one and the same is required to be demolished.

Such submission of the learned advocate for the added private respondent is, however, disputed by Mr. Arefin, learned Advocate for the appellants. According to him, the construction has been made by the appellants strictly on the basis of the sanction plan.

We have heard the learned Advocate for the parties and perused the materials on record.

It appears that the appellant No.2 has replied to the show-case notice dated 24.10.2019 claiming that he has raised construction on the basis of the sanctioned plan dated September 23, 2010. The appellants were heard by the Chairperson, Board of Administrator on July 15, 2020. In the reply to the show-cause notice the appellant no.2 claims to have made the construction. The appellants were given an opportunity of hearing by the Chairperson, Board of Administrator. As such the appellants cannot be said to have been prejudiced by the issuance of a show-cause notice in the name of a dead person.

However, the letter dated July 16, 2020 cannot be said to be an order passed in terms of Section 218 Sub-Section (1) of the West Bengal Municipal Act, 1993. The said letter only directs the appellants to demolish the unauthorised construction without indicating the nature and extent of such unauthorised construction. Furthermore, the learned Advocate appearing for the Municipality, in his usual fairness, submits that no

proceeding was initiated by the Municipality under Section 218 of the Act of 1993. In the absence of any proceeding being initiated under Section 218 of the Act of 1993, the Chairperson, Board of Administrator could not have directed the appellants herein to demolish the construction made in the Holding No.5, Musalmanpara Lane-2 within Ward No.12 under Bhadreswar Municipality. The Memo dated 16.07.2020 is also silent with regard to any admission made by the appellants in the hearing dated 15.07.2020 as to the unauthorised construction made by them. The said Memo also does not disclose the reasons for holding the construction at the premises in question to be an unauthorised one.

In view thereof, the communication made by the Chairperson, Board of Administrator, Bhadreswar Municipality dated July 16, 2020 cannot be sustained in the eye of law and the same is set aside and quashed.

MAT 678 of 2020 is thus disposed of.

In view thereof, nothing remains to be decided in WPA 7027 of 2020 and the same is accordingly disposed of. CAN 1 of 2020 filed in connection with WPA 7027 of 2020 is also disposed of accordingly.

In view of the disposal of the appeal, connected application, being CAN 1 of 2020 filed in connection with MAT 6780 of 2020 is also disposed of.

We, however, make it clear that it will be open to the Municipal Authority to initiate appropriate

proceedings in accordance with law *qua* the construction of the appellants.

All parties shall act in terms of the copy of the order downloaded from the official website of this Court.

Urgent xerox certified copy of this order, if applied for, be supplied to the parties on usual undertaking.

(Hiranmay Bhattacharyya, J.)

(Subrata Talukdar,J.)