

D/L
Item No. 15
25.03.2022
KOLE

**FMA 672 of 2019
With
IA No. CAN 2 of 2021**

**Subarna Baran Panda
-Vs.-
The State of West Bengal & Ors.**

*Mr. Balai Lal Sahoo,
Mr. S. Prasad Roy,*

...for the appellant.

*Mr. Tapan Kr. Mukherjee,
Mr. N. Ghosh Dastidar,
Mrs. S. Roy,*

...for the State.

Mr. Nilanjan Adhikari,

...for the respondent nos. 2 and 3.

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

Despite service of notice, the private respondent nos. 6 to 14 are not represented before us.

The writ petitioner/appellant has challenged an order dated August 2, 2018, passed by a learned Single Judge whereby the learned Judge dismissed the writ petition.

The dispute, in this case, revolves around an alleged unauthorised construction raised by the private respondents in the writ petition. The writ petitioner prayed for initiation of a demolition proceeding in respect of the said construction, by the Contai Municipality, in terms of the provisions of the West Bengal Municipal Act, 1993.

In course of hearing the learned Judge called for a report from the Municipality and accordingly, a report dated

June 1, 2018, from an Assistant Engineer of the Contai Municipality was filed before the learned Single Judge.

On the basis of such report, the learned Judge declined to pass any order and dismissed the writ petition granting liberty to the private parties to avail of their remedies before the appropriate forum in accordance with law.

The relevant part of the survey report is quoted below.

“Building is constructing under the Central Govt. sponsored Scheme styled as ‘HOUSING FOR ALL’. The beneficiaries who are constructing their houses under the scheme are eligible to get the benefit of the Scheme. All of them are belonging to BPL families. So the building is not unauthorized. Further building is constructing as per guideline of the Scheme. The space at the Eastern side is 01’04”. Total length from North to South is 23’01”. In the Western end of the building is 26’05” against 24’05”. At the time of Inspection 4(four) share holders & Writ Petitioner were present, and also they put their signature in inspection sheet.”

Our attention has been drawn by learned advocate for the appellant to page 70 of the paper book which is a report dated October 3, 2016, from an enlisted surveyor of the Contai Municipality relating to the disputed property. It has been submitted that the said survey was conducted on the basis of a complaint filed by the appellant before the Contai Municipality.

From the said report dated October 3, 2016, it appears that the said surveyor found that some of the private

respondents have raised some temporary constructions at Plot No.72 though they have a permanent residential house at Plot No.73 situate at the northern side of Plot No.72.

No doubt the aforesaid two survey reports dated June 1, 2018 and October 3, 2016, though both were prepared by the employees of the Contai Municipality, are contradictory.

The learned Single Judge did not take into consideration the report dated October 3, 2016.

The learned advocate representing the Municipality could not throw light on the said two contradictory reports.

We are not in a position to ascertain or adjudicate such factual aspects.

In view of the aforesaid, we dispose of this appeal granting liberty to the writ petitioner to make a further representation before the Contai Municipality within a period of fourteen days from date and if such representation is made, the Municipality shall consider the same in accordance with law and take a reasoned decision thereon within four weeks from the date of receipt of the representation after giving an opportunity of hearing to all concerned parties including the writ petitioner and the private respondents.

Urgent photostat certified copy of this order be supplied to the parties, if applied for, as early as possible.

(Arijit Banerjee, J.)

(Kausik Chanda, J.)