

10.02.2022
Item No.1
srm

W.P.A. No. 72 of 2019

Tara Shankar Dey

Vs.

The North Barrackpore Municipality & Ors.

Mr. Sabyasachi Mukherjee,
Mr. Mukesh Khanna,
Mr. Bibek Dey

...for the Petitioner.

Mr. Subhabrata Das,
Mr. Mrinal Kanti Das,
Mr. Kartick Goyal

...for the Municipality.

Mr. Ayan Banerjee,
Mr. Anirban Das

...for the Respondent Nos.7 to 9.

The petitioner seeks implementation of the order of demolition passed by the Chairman, North Barrackpore Municipality dated July 12, 2018. The said order of demolition was passed in respect of Holding No.109 of Ward No.23 under the said municipality. The respondent No.9, i.e. the person responsible was directed to demolish the structure. The said order was challenged in a civil suit being T.S. No.633 of 2018. Admittedly, ad interim order was refused and a misc. appeal was preferred being Misc. Appeal No.77 of 2018. As the misc. appeal was pending and the point of interim order in favour of the petitioner had not been considered, the petitioner preferred a civil revisional application before this Court being

C.O. No.470 of 2019. The said civil revisional application was disposed of on March 29, 2019 with a direction upon the learned Court below to dispose of the misc. appeal within three weeks from the date of communication of His Lordship's order. There is no information as to whether the misc. appeal has been disposed of.

The respondent Nos.7 to 9 represented by Mr. Banerjee have not been able to satisfy the Court that the order of demolition has been stayed.

Mr. Mukherjee, learned Advocate appearing on behalf of the petitioner, submits that in the absence of any interim order, the demolition order must be implemented. He further submits that a civil suit was a bar under the law and the proper course for the respondent Nos.7 to 9 would be to prefer a statutory appeal as per the provisions of Section 218(3) of the West Bengal Panchayat Act, 1993.

Mr. Das, learned Advocate appearing on behalf of the North Barrackpore Municipality, also submits that had there been any order of stay or injunction upon the municipality, the municipality would have been informed of the same by now. He further submits that on an earlier occasion, the matter was adjourned at the behest of the respondent Nos.7 to 9 in order to enable them to take steps in the learned Court below.

Mr. Banerjee submits that the order of demolition suffers from several defects including denial of an opportunity of being heard. However, this order is the subject matter of a suit and this Court is not in a position to decide the merits of the demolition order in this proceedings.

Although, Mr. Das denies the allegations of Mr. Banerjee, these issues shall be decided by the appropriate forum in accordance with law. The questions of jurisdiction etc. are not gone into. This proceeding is limited to the prayer of the petitioner for implementation of the order of demolition. In view of the aforesaid facts the order of demolition shall not be given effect to for a period of two months from date, thereafter municipality shall proceed in accordance with law for implementation of its order upon notice to all, unless the order is stayed in the proceeding pending in the court below. This order shall not be construed as an order on merits or on the right of the petitioner to be granted an ad-interim order.

This writ petition is, thus, disposed of.

There will be no order as to costs.

All parties are to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)