

S/L 14  
07.02.2022  
Court. No. 19  
GB

W.P.A. 1765 of 2022

Ashit Mukherjee & Anr.  
VS  
The State of West Bengal & Ors.

*Mr. Kushal Chatterjee,  
Mr. Abirlal Chakravorti.*

*...for the Petitioners.*

*Mr. Ziaul Islam,  
Mr. Benazir Ahmed.*

*...for the State.*

*Mr. Bikash Kumar Chatterjee.*

*...for the Municipality.*

*Md. Sarwar Jahan,  
Mr. Maidul Islam Kayal.*

*...for the Respondent Nos.7 & 8.*

Affidavit-of-service filed in Court today be kept with the record.

The only reason why the Court entertains the writ petition is because admittedly the impugned order of demolition was passed on January 25, 2022 by the Executing Officer, Panihati Municipality, without granting an opportunity of hearing to the writ petitioners.

It is submitted that as per the direction of this Court, the proceedings were initiated by the Panihati Municipality. However, without adhering to the procedure laid down by this Court in the order dated October 7, 2021 passed in WPA 15625 of 2021, the competent authority of the concerned municipality proceeded to pass the order of demolition without hearing the petitioners.

There has been clear violation of the principles of natural justice and the order deserves to be set aside and cancelled on that ground, alone.

The order of demolition of the property of the petitioner has serious consequences. Thus, the principle of audi alteram partem should have been followed before visiting the petitioner with civil consequences. The alternative remedy by way of a statutory appeal, will not be a bar in this case.

The contentions of the petitioners are that the construction was on the basis of a deemed sanction. The rival contentions of the respondents are that the petitioners did not follow the procedure under the law, even if the construction was made on the strength of a deeming provision under the statute.

This Court does not express any opinion with regard to the claim and counter-claim of the parties. These are issues to be decided by the competent authority under the West Bengal Municipal Act, 1993.

The order impugned dated January 25, 2022 issued by the Executive/ Officer Panihati Municipality is set aside only on the ground of violation of principles of natural justice.

It appears that the learned Advocate for the Panihati Municipality does not have any documents to show that a report of inspection was prepared and served upon the parties and that the parties were given an opportunity to deal with the contents of the inspection report.

Under such circumstances, the Court finds that the authority while disposing of the complaint of the respondent nos.7 and 8 failed to abide by the directions issued by this Court. It is expected that in future the authorities shall be careful as to how they should dispose of such complaints of alleged illegal construction, especially when the High Court directs a procedure to be followed.

Under such circumstances, the entire matter shall be considered afresh in the light of the decision of this Court dated October 7, 2021 in accordance with law. The competent authority of the Panihati Municipality shall adhere to the procedure as follows:-

- a) An inspection shall be conducted in the presence of the parties, with 48 hours advance notice to the parties. If the parties are not available to accept notice, the same shall be affixed at a conspicuous place in the respective premises.
- b) Such report shall be handed over to the parties.
- c) A hearing shall be given to the petitioner and the respondents Nos.7 and 8. The parties must also be allowed to furnish their written objection/version to the said report and adduce oral and documentary evidence in support of their contentions before the competent authority.
- d) A reasoned order shall be passed and communicated to the parties. On the basis of what transpires at the hearing and during inspection, the

proceedings shall be reached to its logical conclusion in terms of the statute.

The court has not gone into the merits of the claims and counter-claims of the parties. However, the Court cannot be a silent spectator to the allegation that a construction has been raised without a sanction plan.

Under such circumstances, till the disposal of the entire issue there shall be no further construction. Mr. Chatterjee, however, submits that his clients have stopped construction as soon as complaints have been raised before the Municipality.

The entire exercise shall be completed within a period of four months from the date of communication of this order.

Accordingly, the writ petition is disposed of.

However, there will be no order as to costs.

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

**(Shampa Sarkar, J.)**