

Item No. 7

31.10.2022
Ct-24

In The High Court At Calcutta
Constitutional Writ Jurisdiction
Appellate Side

WPA 5009 of 2021
Suman Bardhan & Anr.

v.

Burdwan Municipality & Ors.
with
CAN 1 of 2022

Mr. Suddha Satta Banerjee
Mr. Nirmalya Chatterjee
... for the petitioners.

Mr. Subhasis Bandopadhyay
... for the Municipality.

Mr. Arnab Mondal
... for the respondent nos. 3, 6 & 7.

The order dated July 13, 2020 passed by the Administrator & Sub-Divisional Officer, Burdwan Sadar (North), Burdwan Municipality in a proceeding under Section 218 of the West Bengal Municipal Act, 1993 is impugned in the present writ petition. An order of demolition was passed for demolishing the unauthorized construction.

The said order was passed in compliance of an order dated July 7, 2020 passed by this Court in WP No. 5728(W) of 2020/ CAN 3671 of 2020 (Sreepally Recreation Club & Ors. v. Burdwan Municipality & Ors.).

The Court directed the respondents to give hearing to the petitioners and all the concerned parties before taking any decision in the matter.

According to the petitioners, they are running their business from the construction which has been directed to be demolished by the Municipality. The petitioners allege that opportunity of hearing was not given to them prior to passing the order of demolition. No notice of the entire proceeding was served upon them ever.

Learned advocate representing the club being the respondent no. 4 herein submits that the order impugned is an appealable one. No appeal has been preferred against the order of demolition till date.

It has been submitted that the club is agreeable to execute the order of demolition.

Learned advocate representing the Burdwan Municipality submits that the order of demolition was passed upon hearing the club at whose instance the construction was made.

It appears from the submission made on behalf of the parties that though the order impugned is an appealable one but the same was passed without complying the principles of natural justice.

The petitioners who are running the business from the structure which is sought to be demolished have not been afforded any opportunity of hearing. The Court, in the earlier writ petition directed the concerned authority to give effective hearing to all the concerned parties.

The Municipality ought to have afforded an opportunity of hearing to the persons who are running their business from the alleged unauthorized construction. It will be highly improper and unfair to demolish the structure without providing an opportunity

of hearing to the persons who are earning their livelihood therefrom.

The order impugned dated July 13, 2020 is set aside and quashed only on the ground of non-compliance of the principles of natural justice.

The Municipality is directed to proceed in the matter afresh strictly in compliance of the direction passed by the Court on July 7, 2020 after affording effective hearing to all the concerned parties including the shop-owners who are running business from the structures sought to be demolished.

Steps shall be taken in the matter at the earliest but positively within a period of eight weeks from the date of communication of a copy of this order. The parties will be entitled to rely upon all documents in support of their stand.

A reasoned order shall be passed and communicated to the parties immediately thereafter.

The writ petition and the connected application stand disposed of.

Urgent certified photocopy of this order, if applied for, be supplied to the parties expeditiously on compliance of usual legal formalities.

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(Amrita Sinha, J.)