

Item No. 110

08.12.2022
Ct-24

In The High Court At Calcutta
Constitutional Writ Jurisdiction
Appellate Side

WPA 5704 of 2021
Nirmalya Saha

v.

The State of West Bengal & Ors.

With

CAN 2 of 2022

(Application not here)

Mr. Prantick Ghosh
Mr. Siddhartha Sarkar
... for the petitioner.

Mr. Rajarshi Basu
Mr. K.M. Hossain
... for the State respondents.

Mr. Bikash Kumar Chatterjee
Mr. Soumyojit Bhatta
... for the Municipality.

The petitioner Nirmalya Saha filed the present writ petition challenging the impugned order dated December 9, 2020 refusing his prayer for addition and alteration of the sanctioned plan.

By the impugned order, the prayer stood refused under Rule 21 of the Building Rules under the West Bengal Municipal Act, 1993. The grounds for rejection of further sanction are as follows:-

- a) Front open space: Adequate from G. Floor.
- b) Rear open space: Inadequate from Gr. Floor.
- c) Right side open space: Inadequate from G. Floor.
- d) Left side open space: Inadequate from G. Floor.
- e) You have already completed your building upto 2nd floor without prior permission from the Panihati Municipality.

One of the grounds for rejection mention that the building has been completed upto the second floor without permission from Panihati Municipality. Apart from the above there is mention of inadequate side spaces.

The petitioner has annexed photocopy of the sanctioned plan wherefrom it appears that plan was sanctioned for making construction of ground, first and second floors.

During the pendency of the writ petition the writ petitioner Nirmalya Saha sold the property in favour of one Sampad Roy. An application has been filed by Sampad Roy for being added as petitioner in the present writ petition and to press the relief sought for by his predecessor-in-interest.

As it appears that the aforesaid Nirmalya Saha has already sold out the property in favour of the applicant, accordingly, the presence of the applicant is required to adjudicate the lis.

As such the application filed for addition of party stands allowed.

As regards the submission of the petitioner challenging the impugned order of refusal to sanction the building plan, learned advocate representing the Panihati Municipality submits that sanction for construction of G+2 storied building was granted in favour of one Barun Karmakar.

The erstwhile writ petitioner Nirmalya Saha submitted one existing four storied building plan for sanction in September 2020. The municipal authority deputed their representatives for measurement of the

existing building when it was revealed that the building was not constructed as per the plan sanctioned in the name of Barun Karmakar. There is deviation as no side space has been left. The subsequent plan which was submitted seeking addition and alteration of the sanctioned building plan has been refused as the same do not conform to the West Bengal Municipal Building Rules.

It has been submitted that the building in question has been constructed prior to submitting the proposal for constructing additional floors.

The learned advocate for the petitioner asserts that no construction has been made in deviation of the plan which has been sanctioned.

In view of the above, the Chairman of the Panihati Municipality is directed to depute a competent person to conduct fresh inspection to ascertain as to whether any unauthorized construction has been made at the said premises. The engineer shall also inspect and take a decision as to whether there is any scope for raising additional floors over and above the sanction granted for consideration.

Spot inspection shall be conducted upon prior notice to the petitioner, Sampad Roy within a period of four weeks from the date of communication of a copy of this order.

A reasoned order shall be passed by the Municipality within a period of four weeks thereafter and the same shall be communicated to the petitioner immediately thereafter.

In the event, it is found that there is any unauthorized construction made without a sanctioned plan or in deviation of the plan sanctioned, the Board of Councillors of the Municipality shall take steps in accordance with law to deal with the same.

Formal order shall be passed communicating Sampad Roy the decision of the Municipality whether any additional construction may be permitted to be made by him.

The impugned order passed by the Executive Officer, Panihati Municipality on December 9, 2020 is kept in abeyance till a further decision is taken by the Municipality.

The writ petition and the connected application are 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.)