

S/L 17  
12.5.2022  
Court. No. 19  
sn

WPA 7054 of 2022  
(C.A.N. 1 of 2022)

Dilip Maity

Vs.

The State of West Bengal & Ors.

*Ms. Mitali Bhattacharjee*  
*Mr. Debangana Bhattacharjee*  
*Ms. Swarnali Saha*  
*Mr. Rajdeep Sinha*

*... for the Petitioner.*

*Mr. Jahar Dutta*  
*Mr. Jaladhi Das*

*... for the State.*

*Mr. B.L. Sahoo*

*..for the added parties*

***In re: C.A.N. 1 of 2022***

C.A.N. 1 of 2022 is an application for addition of party filed by the complainant who had alleged that the petitioner had raised unauthorized construction. The complainant is a necessary and proper party for adjudication of the writ petition, in view of the fact that the order impugned to the writ petition has been passed at the instance of the applicants/complainant, namely, Mr. Ujjal Maity and Chanchal Maity.

The learned advocate on record for the petitioner is directed to add Mr. Ujjal Maity and Chanchal Maity as respondent nos.8&9 to the proceeding.

C.A.N. 1 of 2022 is allowed.

In re: WPA 7054 of 2022

In this writ petition, the petitioner has challenged the order of demolition dated December 27, 2021 issued by the Chairperson, Board of Administrator, Contai municipality. The allegations are that the order of demolition specifically did not indicate the nature and extent of unauthorised construction. An omnibus direction for demolishing the unauthorised construction had been made, without mentioning the exact portion, which was required to be demolished by the persons responsible for such construction.

The other contention is that the authorities did not grant a proper opportunity of hearing and the persons responsible were not allowed to adduce oral and documentary evidence.

Be that as it may, this Court is of the view that although the petitioner has a right to challenge the order of demolition, but in view of an alternative remedy, the writ petition is not maintainable in the present form. The remedy of the petitioner is under Section 218(3) of the West Bengal Municipal Act, 1993.

The petitioner had approached the Division Bench challenging directions passed by a Co-ordinate Bench with regard to such construction. The Division Bench directed as follows:-

“We find no infirmity in the order under appeal. The appeal being M.A.T. 18 of 2022 and the connected application being IA no. C.A.N. 1 of 2022 are accordingly dismissed.

Dismissal of the appeal will obviously not stand in the way of the appellant challenging the demolition order, in accordance with law before the appropriate forum, if he is so advised.”

The petitioner will be at liberty to proceed in accordance with law in terms of Section 218(3) of the West Bengal Municipal Act, 1993.

All points raised in this writ petition shall be available to the petitioner.

The petitioner shall be entitled to pray for stay of the order of demolition before the forum in which the appeal shall be filed.

Prayer for interim protection is not granted in view of the order passed in the contempt application dated January 13, 2022, by a learned Co-ordinate Bench which had directed that the municipality must take steps to demolish the structure in accordance with law. The municipality has not demolished the structure. The appeal court has granted liberty to the petitioner to challenge the demolition order before the appropriate forum. This Court is of the view that the prayer for stay of the demolition must be made before the appellate authority. If any such order is passed by this Court, it would be in conflict with the observation of her Lordship in the order dated January 13, 2022. The petitioner will be at liberty to make appropriate submissions before the learned Judge in the contempt proceeding.

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 server copy of this order and/or the learned advocate's communication.

Urgent photostat certified copy of this order be given to the parties on priority basis, if the same is applied for.

**(Shampa Sarkar, J.)**