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13.07.
2022
Ct. No.24

WPA 7552 of 2022

Anisur Rahman
Vs.
The State of W. B. & Ors.

Mr. Dyutiman Banerjee
.....For the Petitioner
Mr. Rwitendra Banerjee
Mr. Shibasis Chatterjee
.....For the Respondent Nos. 5 to 8

Affidavit of service filed in Court is taken on record.

Learned advocate appearing on behalf of the respondent no. 7 filed Vakalatnama in the department vide filing no. A-12839 dated 13.07.2022. The department is directed to tag the aforesaid Vakalatnama with the records of the present case.

The petitioner prays for implementation of the order dated 10th January, 2020 passed by the Chairman, Jangipur Municipality in respect of a construction made in the premises being L. R. Plot Nos. 514 & 515 of Mouza Basudebpur under the jurisdiction of the Jangipur Municipality.

The aforesaid communication dated 10th January, 2020 was addressed to the private respondents wherein it has been mentioned that upon considering oral and documentary evidence and holding physical enquiry the construction has been

found to be made in contravention and in deviation of the West Bengal Municipal Building Rules, 2007 as well as in violation of the sanctioned building plan.

The Board of Councillors of the Jangipur Municipality unanimously resolved to take steps for demolition of the unauthorized portion of the construction as specified in the report of the technical persons of the municipality.

The private respondents were asked to appear in a hearing to be held on 21st January, 2020 for filing show cause as to why action shall not be taken. The same was a notice under Section 218 of the West Bengal Municipal Act, 1993.

The petitioner submits that till date no steps have been taken by the Municipality to demolish the unauthorized construction.

Learned advocate representing the private respondents submits that no notice was given to the private respondents prior to the holding of physical enquiry. The private respondents were not served the notice dated 10th January, 2020 under Section 218 of the West Bengal Municipal Act, 1993. It has been submitted that a Civil Suit is pending in between the parties.

From the notice under Section 218 of the West Bengal Municipal Act, 1993 it appears that there is a recording of a physical inspection being held. The

private respondents deny the holding of the physical inspection. The private respondents claim that they are not aware of the date, which has been fixed for hearing.

In view of the above submissions, the Chairman of the Jangipur Municipality is directed to conduct a fresh enquiry upon giving notice to all the necessary parties and thereafter take a decision on the allegation of the petitioner regarding unauthorized construction over the aforesaid premises.

If it appears to the Municipality that there has been any construction beyond the sanctioned plan or in deviation of the plan sanctioned, necessary steps shall be taken to deal with the same.

The petitioner has raised a further issue that the Municipality has sanctioned excess floor area in the plan which has been sanctioned in favour of the private respondents.

The petitioner relies upon the reply made under the Right to Information Act, 2005.

It will be open for the petitioner to raise the issue of sanctioning excess floor area in favour of the private respondents before the Chairman of the Municipality. The Municipality shall deal with the issue after physical inspection of the property in question. The Chairman shall intimate the petitioner the fate of the representation of the petitioner

regarding sanction of excess floor area in favour of the private respondents.

It is made clear that the Chairman of the Municipality shall restrict the consideration with regard to the unauthorized construction and the grant of excess floor area and will not enter into any private civil disputes pending in between the parties.

The Chairman shall take all necessary steps in the matter at the earliest, but positively within a period of twelve weeks from the date of communication of this order and shall communicate the reasoned order to the parties immediately thereafter.

The writ petition is disposed of.

Urgent photostat certified copy of this order be supplied to the parties, if applied for, as early as possible.

(Amrita Sinha, J.)

