

Sl. No.88
20.07.2022
Court No.24
BM

In The High Court At Calcutta
Constitutional Writ Jurisdiction
Appellate Side

W.P.A. 8007 of 2022

Inka Infrastructures LLP & Anr.
Vs.
Panihati Municipality & Ors.

Mr. Siddhartha Lahiri
Mr. Debraj Dutta

... for the Petitioners

Mr. Rabindra Narayan Dutta
Mr. Bikash Kumar Chatterjee

... for the Panihati Municipality

Mr. Subir Sanyal
Mr. Kaustab Chandra Das

... for the Respondent No.6

Mr. Sourav Sen
Ms. Adrisnata Chakraborty

.... for the Respondent No.7

The petitioners pray for implementation of the order passed by the Executive Officer, Panihati Municipality on 16th December, 2021 whereby the person responsible has been directed to demolish the illegal and unauthorised construction.

It appears that the aforesaid order was passed in compliance of the direction passed by this Court on 22nd July, 2021 in WPA 7095 of 2021. The Court directed the competent authority of the Panihati Municipality to make an enquiry/inspection upon notice to all parties and in the presence of the respective parties. Steps were

directed to be taken on the basis of the inspection report.

The order dated 16th December, 2021 mentions that measurement was done in presence of both parties and certain unauthorised portions were found. Details of the unauthorised portion have been mentioned in the said order.

The person responsible was requested to show all registered deed, sanctioned plan and municipal tax receipt in regard to the newly constructed area and to demolish the illegal and unauthorised construction.

According to the petitioners, the said order has not been implemented till date.

Learned advocate representing the Panihati Municipality submits that the Board of Councillors has recently taken over charge and time may be given so that proceeding may be concluded in accordance with law.

Learned advocate representing the respondent no.6 submits that the order passed by the Executive Officer is without jurisdiction. The said officer does not have the competency and authority under law to pass the order of demolition.

Reliance has been placed upon provision of Section 218 of the West Bengal Municipal Act, 1993 and the West Bengal Municipal Building Rules, 2007.

According to provision of Section 218, it is the Board of Councillors who may pass an order of demolition upon complying with provision of the said Section.

According to proviso of Rule 32(2) of the West Bengal Municipal Building Rules, 2007 prior to carrying out any demolition of any building or part thereof as described in the notice, owner of the building shall be given a notice stipulating therein date and time to appear, himself or through his authorised representative before the Board of Councillors, who will hear circumstances under which such deviation, unauthorised construction work has been carried out and after hearing record the order of the Board of Councillors and thereafter to communicate the owner officially about the said order.

Learned advocate representing the respondent no.6 submits that a statutory appeal has been filed against the order passed by the Executive Officer, Panihati Municipality being Municipal Appeal No.3 of 2022 and learned advocate representing the respondent no.7 submits that a statutory appeal has been filed by his client against the order passed by the Executive Officer, Panihati Municipality being Municipal Appeal No.4 of 2022.

It appears that in the present case, order dated 16th December, 2021 directing demolition was passed

by the Executive Officer of the Panihati Municipality. The Executive Officer of the Municipality is not bestowed with the power to pass order of demolition.

Accordingly, direction passed by the Executive Officer, Panihati Municipality cannot be acted upon by the person responsible for making construction.

As the Court on the earlier occasion directed the competent authority of the Panihati Municipality to take a decision in the matter, accordingly, the present writ petition is disposed of by directing the competent authority of the Panihati Municipality to take a decision in the matter strictly in accordance with law, at the earliest, but positively within a period of twelve weeks from the date of communication of this order and to communicate the reasoned order to the parties immediately thereafter.

The writ petition stands disposed of.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties upon completion of usual legal formalities.

(Amrita Sinha, J.)