

Sl. No.11
19.09.2022
Court No.24
B.M.

In The High Court At Calcutta
Constitutional Writ Jurisdiction
Appellate Side

W.P.A 9803 of 2021
Nazbunisha @ Nazbun Nisha Bibi
v.
State of West Bengal & Ors.

Mr. Rabindra Nath Mahata
Mr. Debabrata Chakraborti
Mr. Aritra Shankar Ray
... for the petitioner.

Mr. Gourav Das
Mr. Rajaram Banerjee
... for the State.

Mr. Koustav Bagchi
Mr. Debayan Ghosh
Ms. Priti Kar
... for the respondent nos. 8 & 9.

Mr. Mrinal Kanti Das
Mr. Subhabrata Das
Mr. Kartick Kumar Goyal
... for the Municipality.

The petitioner prays for a direction upon the North Barrackpore Municipality to take steps against the unauthorised construction made by the private respondents.

It appears that in response to the complaint lodged by the petitioner a stop work notice was issued by the Municipality.

The private respondent Papia Banik approached the Court of the learned Second Civil Judge, Junior Division, Barrackpore, by filing Municipal Appeal No.2 of 2021 challenging said stop work notice.

The learned Court below has been pleased to pass an order of stay of the said notice on 31st August, 2021 and the order has been extended from time to time.

It appears that the notice impugned in the learned Court below is the stop work notice which was issued under Section 220(1) of the West Bengal Municipal Act, 1993 to discontinue all construction work forthwith pending proceeding in respect of such unauthorized construction. In addition, to the continuation of the work the said construction may be demolished by the Board of Councillors at the expense of the owner under Section 218 of the Act of 1993.

The learned Court below records in the order dated August 31, 2021 that the instant Suit has been filed praying for relief under Section 218(3) of the Act. The Court records that the notice dated June 14, 2021 bearing reference No. 4992-NBM/PWD was issued under Section 218 of the Act.

The Court failed to observe that the impugned notice was issued under Section 220(1). No notice under Section 218 was issued by the Municipality.

Section 218 empowers the Board of Councillors of the Municipality to pass an order of demolition or alteration of building in cases where erection of any building is made without obtaining sanction or in breach of the sanction/permission granted.

The impugned notice has been issued by the Chairman of the Municipality and not by the Board of Councillors. The impugned notice was merely a stop work notice and not an order of demolition.

The impugned notice mentioned that in the event the unauthorized construction continues, then necessary order under Section 218 of the Act may be passed. The stage has not yet arrived for passing any order under Section 218. It was at the stage of 220. Accordingly, the learned Court below erroneously assumed jurisdiction and passed order in the matter.

In view of the above, the instant writ petition is disposed of by directing the North Barrackpore Municipality to draw proceeding in accordance with the provisions of the Act and conclude the same in accordance with law after giving reasonable opportunity of hearing to the petitioner and all other necessary parties.

If required, an inspection may be conducted by the Chairman of the Municipality to ascertain the genuinity of the allegation of unauthorized construction made by the petitioner.

The inspection shall be conducted upon giving prior notice to the petitioner as well as

the person allegedly responsible for making such unauthorized construction.

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

The writ petition stands disposed of.

Urgent photostat certified copy of this order, if applied for, be given to the parties after completion of all legal formalities.

(Amrita Sinha, J)