

31.03.2022
Court No. 19
Item No.1
sn

WPA 10697 of 2021

Anupam Samanta

Vs.

The State of West Bengal & Ors.

Mr. Sarwar Jahan

Mr. Sumanta Dasfor the petitioner

Mr. Amal Kumar Sen

Ms. Saheli Mukherjee ..for the State

Mr. Sankar Halder

..for the respdts.2-4

There seems to be certain irregularities in the proceeding initiated against the petitioner with regard to the procedure followed while passing an order of demolition with regard to illegal construction on Holding No. 22/1 under Ward No. 13 of Krishnanagar Municipality. When the writ petition was admitted by this Court, a co-ordinate Bench, by an order dated June 29, 2021, was pleased to hold that, prima facie, it appeared to the Court that the order of demolition was passed in violation of the principles of natural justice. Thus, although the order is an appealable order, this Court had admitted the writ petition on the ground of violation of the principles of natural justice.

It is submitted by Mr. Halder, learned advocate for the Krishnanagar municipality that a new board

has been constituted and final orders shall be passed upon re-hearing the petitioner.

According to the Court, a post decisional hearing cannot be a substitute for the legal mandate that an order of demolition can neither be passed nor given effect to, without hearing the persons affected by such order.

Under such circumstances, this Court is of the opinion that the writ petition should be disposed of with a direction upon the Krishnanagar municipality to proceed afresh against the petitioner's alleged unauthorised constructions in accordance with law. Accordingly, the order of demolition bearing Memo No.423/21(A)-5/2021 dated June 10, 2021 issued by the Administrator of Krishnanagar municipality, is set aside. The other reasons for setting aside the order is because the board which has been recently constituted, has not heard the issue at all.

The competent authority of the Krishnanagar municipality shall dispose of the entire demolition proceeding afresh by adhering to the following procedure:-

a) An inspection of the concerned premises shall be made. Such inspection shall be held in the presence of the petitioner and the complainant, if any, and all other interested parties within three weeks. Advance notice of the

inspection shall be served upon the petitioner the complainant, if any, and all other interested parties. If the parties are not available to accept notice, the authorities shall affix the notice of hearing and inspection at conspicuous places in their respective premises.

b) In case, it is found on preliminary inspection that there may be reasons to believe that the construction was without permission and was continuing, the authorities may take such interim measures, by stopping such construction.

c) The report of such inspection shall be prepared along with the sketch map, indicating the extent and nature of unauthorized construction, if any.

d) Such report shall be handed over to the parties.

e) A hearing shall be given to the petitioner, the complainant if any, and all other interested. The parties must also be allowed to furnish their written objection/version to the said report and adduce oral and documentary evidence in support of their contentions before the competent authority. All points raised by either party, will be decided.

f) A reasoned order shall be passed and communicated to the parties. On the basis of what transpires at the hearing and during inspection, the proceedings shall be reached to its logical conclusion in terms of the statute. The court has not gone into the merits of the claims and the issues involved shall be decided independently.

Apart from the violation of the principles of natural justice, the extent of deviation from the sanction plan neither has been explained nor indicated in order of demolition. In the opinion of the Court, unless the nature and extent of the unauthorised construction is categorically stated in the order of demolition, such order cannot be implemented. However, the Court is conscious of the power of the municipality to proceed against any unauthorised construction, in accordance with law and therefore, directs fresh hearing.

The entire exercise shall be completed within a period of three months from the date of communication of this order.

This writ petition is, thus, disposed of.

There will be, however, no order as to costs.

All parties are directed to act on the basis of server copy of this order and/or the learned advocate's communication.

(Shampa Sarkar, J.)