

Sl. No.8
28.07.2022

Court No.24
B.M.

In The High Court At Calcutta
Constitutional Writ Jurisdiction
Appellate Side

WPA 13005 of 2022

Saibal Kumar Acharyya
Versus
State of West Bengal & Ors.

Mr. Arabinda Chatterjee, Sr. Adv.,
Mr. Dwarikanath Mukherjee
Mr. Amal Kumar Mukhopadhyay
Mr. Pijush Chaturvedi
Mr. Biplab Kumar Mondal
Mr. Tarun Kumar Das
Mr. Sujit Bhunia
Mr. Pradip Paul
Mr. Jagadish Halder
Mr. Sukhendu Mukherjee
Mr. Arkya Bhattacharyya
Mr. Ambu Bindu Chakraborty
Mr. Anup Dasgupta

... for the petitioner

Mr. Sankha Subhra Ray

... for the respondent nos.2 to 4/
Kamarhati Municipality

Mr. Akashdeep Mukherjee

Mr. Pintu Karar

Mr. Pritam Chatterjee

... for the respondent no.8

Mr. Ranjit Rajak

... for the State

Learned advocate representing the respondent
nos.2 to 4 has filed his Vakalatnama in the department
being filing No.A-12571 dated 28.07.2022.

The department is directed to tag the Vakalatnama
with the records of the present case.

The Kamarhati Municipality has filed a report
before this Court today annexing a copy of the minutes of

the proceeding of the meeting held on 17th May, 2022. Dibyendu Ghosh, person responsible for making unauthorised construction and the petitioner were heard.

It was submitted by the petitioner that construction has been made by the said Dibyendu Ghosh without leaving the mandatory statutory side open spaces. The developer of the property Abhijit Mukherjee was also heard. He failed to provide satisfactory reply to the questions put forth by the Municipality.

The Municipality decided that illegal portion constructed by the developer and Sri Dibyendu Ghosh be demolished within fifteen days and in the meantime no construction to be allowed.

After the meeting held on 17th May, 2022, a formal order was communicated to the developer as well as to Dibyendu Ghosh by communicating letter of the Municipality dated 18th July, 2022.

The order of demolition clearly mentions that the Board of Councillors has come to a opinion that G+3 storied building have been constructed in violation of the sanctioned plan to the extent of front side 2 feet and back side 2 feet cantilever projection.

Direction was initially passed to demolish the unauthorised portion within 15 days. The Municipality thereafter allowed further 15 days' time to demolish the unauthorised construction.

Learned advocate for the petitioner submits that despite order passed for demolition, the private respondents were merrily proceeding with the work of construction.

Learned advocate representing the private respondents at whose instance the unauthorised construction is going submits that an appeal has been preferred against the demolition order dated 18th July, 2022 being M. Appeal No.5 of 2022 before the Second Civil Judge, Junior Division at Barrackpore. It has been submitted that an application for stay has also been preferred which is pending consideration.

As it appears that the order of demolition is an appealable one and an appeal has been preferred, accordingly, it will be open for the petitioner to contest the appeal before the aforesaid forum.

In the meantime, the Municipality is to ensure that no further construction is being carried on in the said premises.

The Officer-in-Charge, Dakshineswar Police Station is directed to keep strict vigil over the property to ensure that no construction in any manner whatsoever is carried on in the said premises till a decision is arrived at by the appellate forum in this regard.

The report filed by the Municipality is taken on record.

The writ petition stands disposed of.

Urgent photostat certified copy of this order, if applied for, be given to the parties on completion of usual formalities.

(Amrita Sinha, J.)