

02. 21.02.2022
Ct. No.06
Tanmoy

F.M.A. 815 of 2019
(M.A.T. 976 of 2019)
With
IA No: C.A.N. 1 of 2019 (Old No: C.A.N. 7447 of 2019)
With
IA No: C.A.N. 2 of 2022

Shashi Agarwal
-Versus-
Bidhannagar Municipal Corporation & Ors.

(Through Video Conference)

Mr. Shuvasish Sengupta, Adv.,
Mr. Soumyajit Mishra, Adv.

...for the appellant.

Mr. Debabrata Saha Roy, Adv.,
Mr. Arka Kumar Nag, Adv.,
Mr. Subhankar Das, Adv.

...for the Bidhannagar Municipal Corporation.

Mr. Himadri Sekhar Chakrabarty. Adv.,
Mr. S.T. Mina, Adv.

...for the State.

By consent of the parties, the appeal and the connected applications are taken up together for hearing.

This is an appeal against an order dated June 14, 2019 whereby W.P. No. 24925(W) of 2018 was disposed of.

The writ petitioner/respondent had approached the learned Single Judge with the grievance that the present appellant, who was the private respondent in the writ petition, has made unauthorized construction on a plot

which is adjacent to the plot owned by the writ petitioner. The learned Judge called for a report from the Bidhannagar Municipal Corporation. Such report of the Executive Engineer dated January 28, 2019 was filed. The relevant portion of the report states as follows:

- *“The building is found to be a straight II-storied building which is as per the sanctioned building plan as produced by the respondent, Smt.Sashi Agarwal.*
- *The mandatory open spaces of the building are encroached in few places.*
- *The internal orientation of the building has been changed with respect to sanctioned building plan.*
- *An unauthorised toilet unit has been constructed in mandatory open space at the back side of the building.*

In view of the above it can be said that there subsists some form of unauthorized construction in the said plot beyond the sanctioned building plan.”

On the basis of the report the learned Judge directed the Corporation to initiate demolition proceedings and to conclude such proceedings within twelve weeks from the date of the order. Being aggrieved, the private respondent has come up in appeal.

The appellant says that copy of the report was not made available to her and as such, she could not take exception to the report. We find from the impugned order that a copy of the report was made over to learned Advocate for the writ petitioner. However, on that date, nobody appeared for the appellant/private respondent

before the learned Single Judge. Perhaps, that is why no copy of the report could be given to her.

In any event, we find the report is not sufficiently detailed and to some extent, vague. We are of the view that this matter needs to be re-heard by the learned Single Judge.

Accordingly, we set aside the order under appeal and remand the matter to the learned Single Judge having determination to hear this matter afresh and to be decided in such manner as the learned Judge deems it fit. His Lordship may call for a further inspection report if deemed necessary.

The appeal being F.M.A. 815 of 2019 and the connected applications being IA No: C.A.N. 1 of 2019 (Old No: C.A.N. 7447 of 2019) and IA No: C.A.N. 2 of 2022 are accordingly disposed of.

Let urgent photostat certified copies of this order, if applied for, be supplied to learned Advocates for the parties upon compliance with all usual formalities.

(Kausik Chanda, J.)

(Arijit Banerjee, J.)