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13.07.
2022
Ct. No.24

WPA 15294 of 2022

Tuhin Ghosh & Anr.
Vs.
Burdwan Municipality & Ors.

Mr. Soumabho Ghose
Mr. Ajitesh Pandey
Mr. Zohaib Rauf
Mr. Zubeen Pandey
.....For the Petitioners
Mr. Subhasis Bandopadhyay
.....For the Municipality
Mr. Anindya Lahiri
Ms. Pranati Das
...For the Private Respondent Nos. 7,
8 and 9

The petitioners are aggrieved by the order dated 28th June, 2022 passed by the Chairman, Burdwan Municipality intimating the demolition programme to be conducted to comply the order of demolition dated 10th June, 2019. The said order of demolition was passed in compliance of the order passed by this Court in WP No. 10440 (W) of 2016.

The order dated 28th June, 2022 was communicated to the petitioner in due time. The order is appealable under the provision of Section 218 (3) of the West Bengal Municipal Act, 1993.

The petitioners have filed the present writ petition on 12th July, 2022 and the matter has been taken up today citing urgency as the demolition is

scheduled tomorrow i.e. on 14th July, 2022,

It appears that in terms of the order passed in WP No. 10440 (W) of 2016, the Board of Councillors of Burdwan Municipality considered the representation filed by the private respondents and after hearing all the parties including the petitioners herein, the Administrator, Burdwan Municipality and SDO, Sadar (North), Burdwan passed an order on 10th June, 2019 mentioning that after going through the fresh inspection report it was found that a plan was sanctioned in favour of Tuhin Ghosh and another. In terms of the said plan the covered area of the first floor extended up to 207 sq. ft. (approximately) and mainly on northern and southern sides.

There was an issue with the drain in respect of the premises of the petitioner. The Administrator of the Municipality invoked the provisions of Sections 251 and 255 of the West Bengal Municipal Act, 1993 and permitted the petitioners to construct the drain to avoid nuisance and unhygienic situation.

With regard to the unauthorized construction the petitioners were asked to demolish the same within fifteen days from the date of receipt of the said order.

The petitioners, in accordance with the direction passed in the order dated 10th June, 2019,

constructed the drain in the common passage but did not take steps to demolish the unauthorized construction standing thereon.

After the demolition schedule was intimated to the petitioner on 28th June, 2022 and the date of demolition was fixed on 14th July, 2022, the petitioner filed the writ petition on 12th July, 2022. In the interregnum between the date of the order dated 10th June, 2019 and the notice of demolition dated 28th June, 2022, the petitioners did not take any steps to challenge the order of demolition which is an appealable one.

In the meantime, the private respondents herein approached this Court by filing a fresh writ petition being WPA 21929 of 2019 upon service of notice to the private respondents therein i.e, the petitioner herein. The petitioner chose not to appear and contest the said writ petition. The Court passed order on 15th June, 2022 by directing the Municipality to implement the direction passed in the order dated 10th June, 2019.

After the order was passed on 15th June, 2022, the Municipality issued the notice of demolition dated 28th June, 2022.

The petitioners are aggrieved by the same.

It has been submitted that the order of

demolition dated 10th June, 2019 is a vague one and the details of unauthorized construction are not mentioned therein. In the absence of the details, it will not be possible for the petitioner to identify the area which is to be demolished.

The petitioner in support of the aforesaid stand relies upon an unreported order dated 28th March, 2022 passed by a Co-ordinate Bench of this Court in WPA 3982 of 2022 in the matter of Sona Karar Vs. The Howrah Municipal Corporation and Ors. In the said writ petition the Court passed certain directions to be followed by the Corporation.

In the present case, though it has been submitted by the petitioner that the order of demolition is a vague one, even then, the petitioner did not care to challenge the said order from June, 2019 till the date of issuance of the schedule of demolition. The said order of demolition has been passed in compliance with the direction passed by the Court.

The Court is not convinced with the argument of the petitioner that the order of demolition is vague inasmuch as the order clearly mentions that there has been an extension of 207 sq. ft. mainly in the northern and southern sides.

The petitioner submits that a plan for fresh

sanction has been submitted before the Municipality which is pending consideration. It has been contended that construction has been made and thereafter the plan has been submitted for fresh sanction.

According to the provisions of law, construction is to be made only upon obtaining sanction from the competent authority and not prior thereto. The contention of the petitioner that construction may be made earlier and then the plan can be sanctioned is contrary to law.

It appears that the petitioner took advantage of the portion of the order which was beneficial to him and ignored the portion which went against him. With full knowledge of the order of demolition, the petitioner failed to act in proper time. The Court ought not to stand by an indolent litigant who sleeps over his rights. It is too late in the day to raise the issues at this stage. The order of demolition has attained finality long ago.

In view of the above, no relief can be granted to the petitioner in the instant case. The writ petition fails and is hereby dismissed.

Urgent photostat certified copy of this order be

supplied to the parties, if applied for, as early as possible.

(Amrita Sinha, J.)