

D/L
Item No. 27
02.08.2022
KOLE

**MAT 1073 of 2022
With
IA No. CAN 1 of 2022**

**Sri Heramba Kumar Chatterjee & Ors.
-Vs.-
Sri Sanjit Ghoshal & Ors.**

*Mr. Jishnu Choudhury,
Mr. A. Kr. Ghosh,
Mr. R. Ghosh,
Mrs. A. Chakraborty,*

...for the appellants.

*Mr. M. Thakur,
Mr. P. Sarathi,*

...for the respondent no. 1.

Mr. S. Chatterjee,

...for the HMC.

Mr. A. Banerjee,

...for the Bally Municipality.

*Mr. Himadri Sikhar Chakraborty,
Mr. A. Maity,*

...for the State.

By consent of the parties the appeal and the application are taken up for hearing together.

A judgment and order dated June 7, 2022, whereby WPA 7255 of 2022 was disposed of by the learned Single Judge, is the subject matter of challenge in this appeal.

The respondent no. 1/writ petitioner approached the learned Single Judge with the grievance that the private respondents were making unauthorized construction on the concerned land and their repeated complaints to the Bally Municipality were in vain. The learned Single Judge

disposed of the writ petition with the following observations:-

“It appears from the submissions made on behalf of the petitioner and the municipality that indeed there has been illegal and unauthorized construction.

The municipality has come to a prima facie finding that 5th and 6th floor of the said construction is unauthorized. The petitioner has submitted that over and above the unauthorized 5th and 6th floor, a 7th floor has also been constructed.

Under such circumstances, the instant writ petition is disposed of by directing the Bally Municipality through its authorized representative i.e. the Administrator of the Bally Municipality to take prompt necessary steps for demolition of such unauthorized construction, strictly in accordance with law, at the earliest, but positively within a period of ninety days from the date of communication of a copy of this order.

The aforesaid respondent shall afford an opportunity of hearing to the petitioner as well as the person(s) responsible for making construction prior to taking a decision in the matter.

The Officer-in-charge of the Bally Police Station is directed to maintain strict vigil over the property to ensure that no further construction is being made in the said

premises till a decision is taken in the matter by the municipality.

The Administrator of the municipality is directed to communicate the reasoned order to all the parties immediately after taking a decision in the matter.”

Being aggrieved, the private respondents have come up in appeal before us.

We have heard learned counsel for the parties. The order impugned is ambiguous to the extent that it may be interpreted as a direction on the Municipality to immediately demolish certain portions of the impugned construction even prior to giving hearing to the private respondents/appellants. That obviously cannot be done.

Since the writ petitioner has made a complaint of unauthorized construction by the private respondents, the appropriate order would be to set in motion the procedure and mechanism contemplated in Section 218 of the West Bengal Municipal Act, 1993. Accordingly, we direct the appropriate authority (we are told presently there is an administrator who is in-charge and the Board is non-functional) of the Bally Municipality to strictly follow the provisions of Section 218 of the West Bengal Municipal Act 1993, in disposing of the complaint of the writ petitioner as regards unauthorized construction having been made by the private respondents/appellants before us. The appropriate authority shall take a reasoned decision in the matter in accordance with law and the applicable rules within a period

of two months from the date of communication of this order after giving an opportunity of hearing to all concerned parties including the present appellants and the writ petitioner. The decision taken by the appropriate authority shall be communicated to the parties within one week from the date of the decision. Needless to say, if the appropriate authority comes to a conclusion that there is merit in the complaint of the writ petitioner to the effect that the present appellants had made unauthorized construction, appropriate remedial orders shall be passed by it.

Since we have not called for affidavits, the allegations made in the stay application are deemed not to be admitted.

Urgent photostat certified copy of this order be supplied to the parties, if applied for, as early as possible.

(Rai Chattopadhyay, J.) (Arijit Banerjee, J.)