

15.07.2022

### Item No.1

Court No.6.

AB

**M.A.T. 1077 of 2022**

**With**

# I A CAN 1 of 2022

## Sabita Nandy

**Vs**

## The State of West Bengal & Others

Mr. Rupayan Deb,

Mr. Samit Bhanja,

Mr. Goutam Misra

Mr. Sirsanya Bandopadhyay,

Mr. Arka Kumar Nag,

Mr. Tirthankar Dey,

Mr. Souvik Roy

Mr. Rahul Karmakar,

Ms. Gargi Goswami.

Ms. Piyashi Chakraborty,

Ms. Sibangi Chattopadhyay

By consent of the parties, the appeal and the

Affidavit of Service filed in Court today be kept

This is an appeal from a Judgment and Order

The private respondent/writer petitioner

approached the learned Single Judge with the

grievance that although an order was passed by the

Commissioner of the Bidhannagar Municipal

Corporation (BMC in short) on January 12, 2018, for

demolition of unauthorized portion of the construction

made on the adjoining plot by the private respondent in the writ petition, such demolition order has not been implemented. The learned Judge noted the deviations made from the sanctioned plan in the impugned construction as recorded in the order of the Commissioner.

It was submitted before the learned Judge by the present appellant that an appeal had been preferred against the demolition order before the Mayor of the Corporation. The learned Judge recorded that according to Section 266(3) of the West Bengal Municipal Corporation Act, 2006, an appeal from an order of the Commissioner would lie before the Municipal Building Tribunal appointed under Section 295A.

The learned Judge also noted that July 12, 2022 had been fixed as the date for demolition. The learned Judge directed the demolition to proceed as scheduled and has made the matter returnable on July 18, 2022 before Her Lordship.

We have heard learned Counsel for the parties. Learned Advocate appearing for the appellant vociferously argued that his client was not given an opportunity of hearing before the order of demolition was passed. This was in gross breach of the principles of natural justice.

We are not impressed with the submission made on behalf of the appellant. The appellant did not

challenge the order of the Commissioner before the learned Single Judge. The writ petition was filed for implementation of the order of the Commissioner, which was passed way back on January 12, 2018. The appellant says that she has filed an appeal before the Mayor. We do not see how such appeal is maintainable. In any event, it is the appellant's choice how to assail the order of the Commissioner.

We are of the view that the learned Single Judge correctly directed implementation of the order of the Commissioner, which lies unimplemented for a long period of time.

The learned Advocate for the Corporation says that every time an attempt was made to implement the order, there was resistance from the appellant and her family members. On one pretext or the other, the appellant has successfully stalled implementation of the order of demolition till date.

Mr. Bandopadhyay, learned Advocate representing the Corporation says that this appeal is a continuation of the writ petition filed by the private respondent in this appeal and in this proceeding, the appellant cannot challenge the demolition order of the Corporation. He is right.

We find no infirmity in the order of the learned Single Judge. The appellant had enough time to challenge the Commissioner's order of demolition before the appropriate forum and get the order set

aside if she could. We are not inclined to interfere with the impugned order.

In the event, the Officer-in-charge of the Jurisdictional Police Station is approached by the Officers of the Corporation for assistance in implementing the order of demolition, the Officer-in-charge shall extend all cooperation in that regard.

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

Accordingly, MAT No.1077 of 2022 fails and the same is hereby dismissed along with IA CAN 1 of 2022.

Urgent photostat certified copy of this order, if applied for, be supplied expeditiously after compliance with all the necessary formalities.

**(Rai Chattopadhyay, J.)**

**(Arijit Banerjee, J.)**