

D/L
Item No. 12
14.09.2022
KOLE

**FMA 1099 of 2022
With
IA No. CAN 1 of 2022**

**Harisadhan Naskar
-Vs.-
State of West Bengal & Ors.**

*Mr. Debabrata Saha Roy,
Mr. L. N. Chatterjee,*

...for the appellant.

*Mr. Amitesh Banerjee, Ld. Sr. St. Counsel,
Mr. Tarak Karan,
Mr. S. Panja,*

...for the State.

Mr. Habibur Rahaman,

...for the respondent 6.

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 the appellant's writ petition being WPA No. 18508 of 2016 was dismissed by a learned Single Judge is assailed in the present appeal.

The appellant had approached a learned Single Judge earlier by filing WP 29294(W) of 2015 with the grievance that the concerned Municipality was not considering his application for sanction of a building plan on a particular plot of land. The learned Judge disposed of the writ petition by passing the following order:

"The writ petitioners give an undertaking to this Court not to construct in the area claimed to be a pond or water body and in respect of which a criminal case has been started by the police. With regard to the rest of the area the Jaynagar Majilpur Municipality will sanction the writ

petitioners' application in accordance with law upon giving a hearing to the petitioners or their representative within four weeks of communication of this order."

Pursuant to such order, the Chairman of the Jaynagar-Majilpur Municipality passed an order dated July 20, 2016 rejecting the appellant's prayer for sanction of the building plan. That rejection order was challenged by the appellant by filing the present writ petition.

It was primarily argued before the learned Single Judge on behalf of the writ petitioner/appellant that the order passed in the earlier round of litigation directed the Municipality to take a decision in the matter. The Chairman acting alone could not take any decision. The rejection order was without jurisdiction and a nullity.

The learned Judge called for and looked into the relevant records and found that the land in question is recorded as 'Doba' and therefore no construction could be made thereon. Having so found, the learned Judge held that the question as to whether or not the Chairman had the power to pass the order rejecting the appellant's application for sanction of building plan, is a technical point and "pales into insignificance in view of the fact this Court has made an exercise to find out whether the land in question under plot nos. 606 and 607 has been classified as 'Bastu' or 'Doba' by calling for report from the concerned authorities of the State respondents". The learned Judge dismissed the writ petition as meritless. Being aggrieved, the writ petitioner is before us by way of this appeal.

We have heard learned Counsel for the parties. We have no intention to go into the merits of the case. We are of the view that the appellant is right in contending that the Chairman of the Municipality was not competent to take the decision which was under challenge before the learned Single Judge. The direction of this Court was on the Municipality to take a decision which necessarily means the Board of Councillors of the Municipality as is envisaged in Section 207 of the West Bengal Municipal Act, 1993, which is reproduced hereinunder.

“S. 207. Sanction of building plan and permission to execute work._

(1) within sixty days after the receipt of any application with building plan or of any information or document which the Board of Councillors may reasonably require the applicant to furnish before deciding whether sanction shall be accorded in this regard, the Board of Councillors shall, by written order,_

- (a) either accord sanction to the building plan conditionally or unconditionally and give permission to execute the work, or*
- (b) refuse, on one or more of the grounds mentioned in section 210, to accord such sanction, or*
- (c) accord sanction but impose conditions for compliance before permission to execute the work.*

(2) A building plan sanctioned under this section shall remain valid for three years from the date of such sanction, and may be renewed for such period, and on payment of such fee, as may be prescribed”.

We are of the opinion that the learned Single Judge without going into the merits of the case ought to have sent back the matter for consideration afresh by the Board of Councillors of the Municipality in terms of the order dated

May 18, 2016, passed by a learned Judge of this Court in WP No. 29294 (W) of 2015.

The order under appeal as also the order dated July 20, 2016, passed by the Chairman of the Municipality are set aside. The matter is sent back for fresh consideration by the Board of Councillors of the Jaynagar-Majilpur Municipality. Let the Board of Councillors of the Municipality take a reasoned decision on the application of the appellant, in accordance with law, after consulting the relevant land records within a period of 12 weeks from the date of communication of this order, after giving an opportunity of hearing to the appellant or his authorized representative. The decision so taken shall be communicated to the appellant within a week from the date of the decision.

We make it clear that we have not gone into the merits of the case at all. The Board of Councillors of the Municipality shall take an informed decision in the matter in accordance with law.

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

FMA 1099 of 2022 and CAN 1 of 2022 are, accordingly, disposed of.

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

(Apurba Sinha Ray, J.) (Arijit Banerjee, J.)