

D/L
Item No. 26
18.01.2022
KOLE

**MAT 1166 of 2021
With
IA No. CAN 2 of 2021**

**Krishnendu Roy
-Vs.-
The State of West Bengal & Ors.**

Mr. Shyamal Chakraborty

...for the appellant.

*Mr. S. Kr. Mitra,
Mr. S. Das,*

...for the State.

*Mr. T. Kr. Bhattacharya,
Mr. A. Bhattacharyya,*

...for the respondent nos. 7 to 9.

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

This appeal is preferred against a judgment and order dated March 10, 2021 whereby WPA 1303 of 2021 was disposed of.

The writ petitioner approached the learned Single Judge with the grievance that the private respondents being the co-owners of a property along with the writ petitioner, were making unauthorized/illegal construction on such property. The writ petitioner contended that without obtaining any sanctioned plan, construction was being made.

The Learned Judge recorded the submission of the private respondents that their prayer for regularization of the unauthorized construction had been made within the time specified in an order dated February 10, 2020 passed by the concerned Board of Councillors. The learned Judge noticed that Section 218 of the West Bengal Municipal Act,

1993 provides the Municipality, the option, either to order demolition or alteration of the construction that has been made. It was observed that in each and every case unauthorized construction need not be demolished. The Municipality is vested with the Authority to direct alteration of the same, if required. Observing as aforesaid, the learned Judge rejected the writ petitioner's prayer for demolition of the alleged illegal and unauthorized construction made by the private respondents. Being aggrieved, the writ petitioner is before us.

The writ petitioner in effect challenged the Board of Councillor's order dated February 10, 2020 before the Learned Single Judge. Section 218(3) of the West Bengal Municipal Act, 1993 provides that an appeal against an order made by the Board of Councillors under Section 218 shall lie with the Court having jurisdiction.

Learned Advocate for the private respondents submits that in view of such alternative remedy being available, the learned Judge should not have entertained the writ petition at all.

We are conscious that existence of an efficacious alternative remedy is not an absolute bar to the maintainability of a writ petition. However, generally the Writ Court will not exercise the high prerogative writ jurisdiction under Article 226 of the Constitution of India where an alternative remedy is available to the aggrieved person. This is a self-imposed restriction.

In the facts of the present case, we are of the view that Section 218(3) of the 1993 Act provides an efficacious alternative remedy to the writ petitioner. The grievance of the writ petitioner can be better addressed in the statutory appeal that is contemplated by Section 218(3) of the Act.

Accordingly, without going into the merits of the contentions of the respective parties, we dispose of the appeal and the connected application by granting liberty to the writ petitioner to prefer statutory appeal under Section 218(3) of the 1993 Act before the appropriate Court. If such appeal is filed within four weeks from date, the Appellate Forum shall decide the same on merits without going into the question of time bar. Needless to say that the principles of natural justice shall be strictly adhered to. The order under appeal is set aside. If the statutory appeal is preferred by the writ petitioner within the time indicated above, the same shall be decided in accordance with law without being influenced by any observation in the order impugned in this appeal or in our present order. The appeal, if filed within the prescribed time period, should be disposed of as early as possible.

The appeal, being no. MAT 1166 of 2021 and the connected application, being no. CAN 2 of 2021 are accordingly disposed of.

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

(Kausik Chanda, J.)

(Arijit Banerjee, J.)